

LAND AND NATURAL RESOURCES

Land

“Guam is not just a piece of real estate to be exploited for its money-making potential. Above all else, Guam is the homeland of the CHamoru people. That is a fundamental, undeniable truth. We are very profoundly “taotao tano”—people of the land. This land, tiny as it is, belongs to us just as surely, just as inseparably, as we belong to it. No tragedy of history or declaration of conquest, no legalistic double-talk can change that fact. Guam is our legacy. Is it for sale? How can one sell a national birthright?”⁹³⁵

– Governor Ricardo Bordallo

The words above, from former Governor Ricky Bordallo, show the importance of land to the CHamoru people. Any conversation on decolonization that is not centered on land is not a true conversation on decolonization, but rather reform. Guam’s strategic location, intertwined with its current political status, has undeniable ramifications for the current use of Guam’s land, particularly its military use. As mentioned by Brigadier John Doucette, “Since Guam is part of the United States, potential operations from here are not subject to foreign government approval or international agreements.”⁹³⁶ Furthermore, US Major General Dennis Larsen said regarding Guam, “This is American soil in the midst of the Pacific. Guam is a US territory. We can do what we want here and make huge investments without fear of being thrown out.”⁹³⁷

Guam’s status as an unincorporated territory, without a full measure of self-government, currently makes it easier for the US military to take unilateral action in the island. In Guam, a colony of the US, the military does not have to gain consent from the government of Guam. Thus, the current status situates the

935 Ricardo Bordallo as quoted in Michael Phillips “Land Ownership in Guam,” in *Kinalåmten Pulitikåt: Siñenten i Chamorro: Issues in Guam’s Political Development* by the Political Status Education Coordinating Commission, 1996, 2.

936 Max Cacas, “Small Island Has a Big Role,” *Signal Magazine*, October 2011, <https://www.afcea.org/content/small-island-has-big-role>.

937 David Vine, “Base Nation,” *American Empire Project*, Accessed at 2019, <http://americanempireproject.com/base-nation/>.

local government, in many ways, as inferior to military plans and actions in the island. To put it another way, one cannot understand Guam's political status or current state without understanding the history of land use. In order to be an effective base, land had to be taken and utilized by the US military. This serves as the foundation for many historical and current grievances.

Thus, decolonization is foundationally about the selection of a political status that applies not just to people in Guam, but also all the land that the island encompasses. As articulated by scholars Tuck and Yang, decolonizing must involve, "the repatriation of land simultaneous to the recognition of how land and relations to land have always been differently understood and enacted."⁹³⁸ The issue of land and the people of Guam cannot be neatly separated when it comes to Guam's future political status. In making the decision as to which political status best serves the island, considerations of land use and control are necessary to take into account.

The topic of land in Guam is broad, with ramifications (historical, legal, economic, social, cultural, and political) that stretch across generations. The complexities of the issue of land in Guam's colonial periods could comprise a separate study in and of itself. However, in this portion of Part II of *Giha Mo'na*, not all topics can be covered. Acknowledging this, the two primary questions investigated in this section are: How can the land potentially be used under each respective status?; and What possible changes may be made regarding distribution and ownership of land?⁹³⁹ These questions help provide a launching point for further questions and considerations on what the different political statuses can offer when it comes to land. As will be traced further in the history below, the overarching message is that there is nothing more important to Guam's future economic, social and political development than the manner and extent to which the people of Guam control the land. As best said by former Senator Tom Ada during hearings for the Guam Excess Land Act, "Chamorro landowners are the exclusive source of all lands currently held by the Department of Defense for US bases. Regardless of whether the land takings were conducted with callous intent, or are simply the result of a bureaucratic mind-set, the outcome remains the same; the economic and social displacement of a native people within their own homeland."⁹⁴⁰

There are two simultaneous and interrelated phenomena occurring when it comes to the land issue in Guam today. The first is the issue of land takings as defined by the relationship between a colony and the US government. The second is the issue of the detrimental effects of land dispossession to indigenous peoples. Regarding the latter, the desire for land is often the root of colonialism and dispossessing indigenous peoples of their land has been a ubiquitous occurrence through the history of colonialism and imperialism. Dispossessing people of their land is never just taking "real estate" away. For indigenous peoples, land is a set of relationships. Mohawk scholar Taiaiake Alfred writes, "Land, culture, and government are inseparable in traditional philosophies; each depends on the other, and this means that the

938 Eve Tuck and K. Wayne Yang, "Decolonization is not a metaphor," *Decolonization: Indigeneity, Education & Society* 1, no. 1 (November 2012): 7, accessed at <https://clas.osu.edu/sites/clas.osu.edu/files/Tuck%20and%20Yang%202012%20Decolonization%20is%20not%20a%20metaphor.pdf>.

939 Neither this section nor this study will discuss/analyze the monetary value of Guam's land resources, as doing so is beyond the scope and capacity of the study.

940 Guam Excess Land Act, "Hearing on H.R. 2144," July 29, 1993, 107.

denial of one aspect precludes recovery as a whole.”⁹⁴¹ Furthermore, Kanaka Maoli scholar Haunani-Kay Trask writes, “No one knows how better to care for our island home, than those of us who have lived here for thousands of years...The secrets of the land die with the people of the land. This is the bitter lesson of the modern age...The land cannot live without the people of the land who, in turn, care for their heritage, their mother.”⁹⁴²

When examining the issue of land takings in Guam, it should be viewed as a disturbance of these sets of CHamoru relationships to the land. The land issue cannot be separated from the effects on the people of the land, and this is fundamental in determining political status futures for the island.

Overview of Land

Land in Guam is divided into three different categories: federally held land; public land (land owned by the government of Guam); and privately owned land. Federally held land comprises approximately thirty percent (thirty-two percent as stated in the Guam Department of Land Management’s 2015 Briefing to the 33rd Guam Legislature Committee on Lands provided to the authors), most being for military use. The government of Guam possesses approximately upwards of twenty percent (a legislative resolution mentions 25%) of the land and privately owned land comprises roughly upwards of forty-five percent.

941 Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford: Oxford University Press, 1999), 26-27.

942 Haunani-Kay Trask, *From A Native Daughter: Colonialism and Sovereignty in Hawaii* (Honolulu: University of Hawaii Press, 1999), 80-82.

BREAKDOWN OF LAND IN GUAM⁹⁴³

943 Guam Department of Land Management, 33rd Guam Legislature Committee on Lands, Et Al. “Briefing,” 2015, 4.

Federal Land	~32%
Public Land/GovGuam Land	~20%
Private Land	~48%

Geology: The island is divided geologically between the north and south. The northern half of the island is a limestone plateau bordered by steep cliffs rising from the shoreline, and the southern half is composed of a dissected volcanic island upland with a discontinuous ridge of mountains paralleling the west coast of the island. It is split in half via a fault zone between Adelup Point and Pago Bay.

According to a geological study regarding the porous composition of the north, “The limestone is so permeable that no permanent streams exist on the plateau, although several small intermittent streams dissect the low limestone land near Agana.”⁹⁴⁴ This leads to limestone soil in northern Guam and volcanic soil in southern Guam. Relating Guam’s geology to potential economic value of the land, there are limitations. As articulated,

The poor substructure and steep slopes of the southern half of Guam make it less suitable to construction and more prone to landslides than the northern half. Arable land in the south is the richest in Guam, but only in the river valleys and narrow alluvial plains. As a consequence, there is considerably less agricultural development in the southern than in the northern half. Therefore, a much smaller proportion of the south is suitable to the support of economic activity. With the notable exception of Naval Activities Guam (formerly Naval Station, Apra Housing, Naval Magazine and other, smaller facilities, which collectively much of the best land in the west-central part of the island), Guam’s South has been left almost entirely to civilian control.⁹⁴⁵

Dr. Mohammad Golabi, a professor of soil science at the University of Guam, describes the island’s northern soil as being alkaline, calcareous limestone, that is low in micronutrients such as iron and zinc, while the island’s southern soil is volcanic, acidic, high in clay, and found in hilly and slopy terrain. According to Golabi, the respective soils and terrains of both regions are fit for growing different types of crops. Nevertheless, crops typically unfit for growth in either region can be accommodated through unique agroforestry and soil composition amendment techniques developed and tested by various programs at the university.⁹⁴⁶ In examining how the geology of the land may relate to its use, the draft North and Central Guam Land Use Plan notes,

The north/central communities of Barrigada, Dededo, Mangilao, Tamuning, and Yigo are characterized by the large proportion of land owned by the federal government, as well as the presence of a large concentration of residential development. As previously discussed, these communities represent a large portion of the island’s population, and the local villages served as bedroom communities for residents who work in Hagåtña, or in the more urban areas of Tamuning. Mangilao is the “education district” and is home to the University of Guam and the Guam Community College.

The southern portion of the island contains large expanses of undeveloped land. Development here experiences challenges from the presence of steep slopes and unstable soils. Most villages occur

944 United States Department of the Interior, “General Geology of Guam,” Joshua Tracey, et al. (Washington, D.C.: US Government Printing Office, 1964), A8, Accessed at <https://pubs.usgs.gov/pp/0403a/report.pdf>.

945 Bradley, “Economic Impact of Guam’s Political Status Options,” 6.

946 Personal Communication with University of Guam Professor Dr. Mohammad Golabi, July 16, 2020.

along the coast, with little development in the interior. The south holds the largest concentration of agricultural lands on Guam, as well as large areas of designated recreational/open space.⁹⁴⁷

Decolonization will not change Guam's geology. All status options must take into account the geological and geographical factors that influence the economic and other potential uses (or non-use) of the land.

Submerged Lands: The waters surrounding Guam contain submerged lands which are defined as “areas in coastal waters extending from the Guam coastline into the ocean three nautical miles (nm)” and also include “the seabed beneath them.”⁹⁴⁸ With the enactment of US Public Law 93-435, an Act “to place certain submerged lands within the jurisdiction of the governments of Guam, the Virgin Islands, and American Samoa...,” jurisdiction over the majority of the submerged lands surrounding Guam, as well as the other territories, was transferred to the local territorial government. Excepted from this transfer were several areas and resources deemed necessary to remain under US jurisdiction, to include:

1. all deposits of oil, gas, and other minerals, but the term “minerals” shall not include coral, sand, and gravel
2. all submerged lands adjacent to property owned by the United States above the line of mean high tide
3. all submerged lands adjacent to the property above the line of mean high tide acquired by the United States by eminent domain proceedings, purchase, exchange, or gift, after the date of enactment of this Act, as required for completion of the Department of the Navy Land acquisition Project relative to the construction of the Ammunition Pier authorized by the Military Construction Authorization Act, 1971 (...)
4. all submerged lands filled in, built up, or otherwise reclaimed by the United States, before the date of enactment of this Act, for its own use
5. all tracts or parcels of submerged land containing on any part thereof any structures or improvements constructed by the United States
6. all submerged lands that have heretofore been determined by the President or the Congress to be of such scientific, scenic, or historic character as to warrant preservation and administration under the provisions of the Act entitled “An Act to establish a National Park Service, and for other purposes”, (...)
7. all submerged lands designated by the President within one hundred and twenty days after the date of enactment of this Act
8. all submerged lands that are within the administrative responsibility of any agency or department of the United States other than the Department of the Interior

947 Guam Bureau of Statistics and Plans, “Guam Land Use Plan,” 2-7 & 2-8.

948 Department of the Navy, “Guam and CNMI Military Relocation, Final Environmental Impact Statement,” July 2010, Volume 2, 8-1 and 8-5.

9. all submerged lands lawfully acquired by persons other than the United States through purchase, gift, exchange, or otherwise

The Act also contained a provision that allowed the governor of Guam to request and be granted ownership and jurisdiction over the previously listed reserved lands (ii, iii, iv, v, vi, vii, viii) upon receiving approval from the Secretary of the Interior, the US agency holding the land, and without receiving disapproval from the US Congress. Within the act were also several provisions that reasserted the United States' complete sovereignty over the submerged lands, with one reading,

Nothing in this act shall affect the right of the president to establish naval defensive sea areas and naval airspace reservations around and over the islands of Guam, American Samoa, and the Virgin Islands when deemed necessary for national defense.⁹⁴⁹

As such, the government of Guam owns and holds jurisdiction of large portions of tidal areas surrounding Guam, with the US military reserving areas deemed necessary for defense use.⁹⁵⁰

With the institution of permitting laws, environmental regulations, and mechanisms for government revenue, several submerged lands projects have been completed to accommodate undersea telecommunications cables. Guam is now host to several landing sites of undersea telecommunications cable, with several in the process of being permitted and constructed. Moving forward, this resource provides opportunities for continued advancement, especially as Guam is an alternative to Hong Kong, where there is concern about PRC (People's Republic of China) accessing IT networks. Guam is also an attractive site for regional telecom and IT providers to route traffic through, given concerns about PRC surveillance of and possible restriction of signal traffic.

Guam appears to have a material role as a hub for undersea communication cables. Assistant Professor at Miami University, Nicole Starosielski, provides keen insights into Guam's role in cable infrastructure. In her book *The Undersea Network*, she describes Guam's importance, writing,

Guam's remote location, its proximity to a huge undersea drop-off (the Mariana Trench), and the relatively little coastal boat traffic naturally protect cables from fishing or anchoring. The systems here do not even need to be buried under the beach. More cables have landed on Guam than at any other American location in the Pacific—including Hawai'i and California, two major hubs for signal exchange— as of the time of writing the island has more capacity for international signal traffic than either of these states.⁹⁵¹

949 An act to place certain submerged lands within the jurisdiction of the governments of Guam, the Virgin Islands, and American Samoa, and for other purposes, Public Law 93-435. 1210-1211, Accessed at <https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg1210.pdf>.

950 Department of the Navy, "Guam and CNMI Military Relocation, Final Environmental Impact Statement," Volume 2, 8-1 and 8-5.

951 Nicole Starosielski, *The Undersea Network* (Durham and London: Duke University Press, 2015), 175.

Furthermore, she argues that,

Guam has become a critical node: a place that is not just the sum of individual traffic routes but also a site where companies can benefit from existing structures; where blocked outward transmissions can be rerouted (although inward traffic is less easily diverted); and where economic surpluses are more easily generated. Its power extends beyond the grasp of any individual force such as the military, private investment in trade routes, and the oceanic and atmospheric currents. This concentration of communications resources makes the island of Guam a pressure point in the cable network, where—as at many cable landings—local actions and environmental forces can produce disproportionate effects on its operation.⁹⁵²

In whatever political status is ultimately chosen, Guam could find a way to use this to its advantage.

History of Land Use

In this portion, a truncated overview of land in Guam is provided from the CHamoru creation story to current land return negotiations between the government of Guam and the US military. In tracing this history, one sees a story of the importance of land and the interplay between an inferior political status (or complete lack of one) and the usurpation of CHamoru control of the land. In order to fully understand what is possible regarding land under the three different political statuses examined here, it is imperative to first analyze the historical connection between colonial political processes and the way land in Guam has been utilized and controlled. Through this analysis, one can further understand how a change in political status presents new opportunities and obstacles regarding Guam's land.

According to CHamoru epistemology, the island and its people were created by Puntan yan Fu'una (Pontan yan Fo'na), a brother and sister. According to the story, upon his death, Puntan asked his sister Fu'una to use her powers to create the world from his being. Fu'una took her brother's eyes and made one eye the sun and the other eye the moon. She took his back and created the earth. She took his eyebrows and created the rainbow. "She used her energy and spirit to bring to life the parts of her brother's body that now formed the world. With her power, she made the sunshine and the earth blossom."⁹⁵³ When she was finished, she transformed her body into Fouha Rock and from her, the first CHamorus emerged. CHamorus would make annual pilgrimages to this site of creation, with this tradition being revived today.

In addition to the creation story, there are many everyday family stories of land. In Guam, it is common to hear elders tracing their lineage and telling stories of the land they grew up in. People in Guam routinely share stories of a hard day's work on their family ranch or playing in the trees of their backyards. "From a CHamoru epistemological perspective, the land is imbued with spiritual qualities that has survived despite

952 Starosielski, "The Undersea Network," 180.

953 Anne Perez Hattori, "Folktale: Puntan and Fu'una: Gods of Creation," *Guampedia*, accessed at <https://www.guampedia.com/puntan-and-fuuna-gods-of-creation/>.

heavy Catholicization. Many CHamorus still ask permission from the ancestral spirits before entering the jungle. This shows the persistence of a metaphysical, spiritual nature to the land in Guåhan.”⁹⁵⁴

This is because land is one of the most important aspects of life for the CHamoru people (and indigenous people in general). Reverend Joaquin Flores Sablan stated, “Land ownership was the greatest security, particularly inherited property which they treated as a sacred trust from their parents. To part with the land was the same as committing suicide.”⁹⁵⁵ This is why no matter what status is chosen, the issue of how to value the land needs to be considered. One can view land as merely real estate, while others can trace land as a part of their family genealogy. In certain instances, these conceptions of land may conflict with one another. Furthermore, the issue of developing the land versus preserving it and making it sustainable may also come to the forefront of land debates in Guam.

The CHamoru people heavily value the land and ocean as the source of their livelihood and land is important in multiple ways. As CHamorus followed a clan system, much of the land in the island was divided according to extended families in clans, which were led by male and female chiefs named maga’låhi and maga’håga. The concept of private property would not be introduced until the period of Spanish colonialism. As articulated by Guam attorney Michael Phillips regarding land in the Spanish colonial period, “Although the Spanish imposed a system of real estate taxes based on the amount of money earned from use of the property, these revenues were never enough to fund their administration of Guam.”⁹⁵⁶ As part of this change in treatment of land, the Spaniards also changed the traditional matrilineal system of the island in which land and clan were passed down through one’s mother. With Spanish colonialism, the Spanish “male primogeniture inheritance superseded the traditional Chamorro matrilineal system.”⁹⁵⁷ This would be a key moment in Guam’s history as it disenfranchised CHamoru women as formal land-owners. Many titles had to be filed in a male’s name, even if they were not considered by the family to be the relative responsible for the dispersal and holding of land. This would have intergenerational effects and serve as one reason for land disputes among family members today. In this first colonial wave, one already sees the effect of foreign rule and governance on certain aspects of the land. The US Naval era would represent another chapter in the usurpation of CHamoru control of the land.

Pre-WWII Naval Government⁹⁵⁸

The effects of US Naval rule were made apparent within the first few years of US colonization of the island. The first US Naval governor, Richard Leary, instituted a new tax system that changed the old Spanish land taxation method of taxing money earned from the use of property to a system based on the size and geological type of the land owned. CHamorus began to understate the size of their land to avoid

954 Kuper, “The Production of Military (In)security in Guåhan,” 124.

955 Robert F. Rogers, *Destiny’s Landfall: A History of Guam* (Honolulu, HI: University of Hawai’i Press, 1995).

956 Phillips, “Land,” 5.

957 Rogers, “Destiny’s Landfall,” 69-70.

958 Taken from pgs. 120-121 of Dr. Kuper’s dissertation (citations within the document also cited in this text).

having to pay a larger tax and lose their land. Leary also passed General Order No. 15, which gave the CHamoru people a few months to register their land or else their ownership of that land would not be recognized.⁹⁵⁹ The Naval government told CHamorus that any land that was not registered by this date would be considered Spanish Crown land. The Naval government, upon assuming control of the island, claimed all “Spanish Crown lands” to use for its purposes.⁹⁶⁰ This was the conundrum for CHamorus at the time: pay the tax or lose their land. This system was set up for many CHamorus to lose their land and subsequently, their livelihoods and subsistence. “General Order No. 15 forced the Chamorros to make a choice: either register their properties accurately and lose them because they could not pay the taxes, or not register their lands and lose them because they were not properly registered.”⁹⁶¹ This helped to serve as another step in the dispossession of the CHamoru people of their land.

World War II Land-Taking and Organic Act Transfers

The post-war transformation of Guam into a forward operating base saw the largest land-taking by the US military in Guam. CHamoru historian Antonio Palomo, in *An Island in Agony*, describes this transformation. He writes, “Farmlands were converted into airfields and villages which had escaped destruction during the actual fighting were moved elsewhere...And with the massive military buildup, thoughts of reverting Guam to its prewar agricultural economy were wishful thinking.”⁹⁶² In the two largest villages before the war, Hagåtña and Sumay, 11,000 of the island’s 20,000 inhabitants were displaced as a result of the war and the American transformative war effort. By 1947, a total of 1,350 families had lost their land and homes due to military actions.⁹⁶³ While many CHamorus of this time understood temporary land taking to help the Americans finish the war, they did not expect permanent dispossession of their land. This would lead to CHamoru attempts to get their land back, such as the formation of the Guam Landowners’ Association and Nâsion CHamoru. It must be made clear that, throughout Guam’s history and present, CHamorus have consistently fought to get their land back.

During this immediate post-war period, the military controlled close to sixty percent of the island. To handle the newly landless CHamoru population, the military began to construct “small dwellings and tent-frame structures” in the new villages of Dededo, Barrigada, Sinajana, Yona, Asan, Santa Rita, and Agat. By mid-1945, it was estimated that nearly five thousand CHamorus remained homeless in these refugee camps because they were not yet allowed to return to the villages of Hagåtña and Sumay. Many CHamorus despised being kept in refugee camps, and in late August 1944, a group of CHamorus led by Simon A. Sanchez and others decided to leave the camp to settle on land in Dededo. Another confusing aspect of this temporary refugee housing situation was that “in almost every case, the land on which the

959 Guampedia, “Richard P. Leary General Order Nos. 1-21,” accessed at <https://www.guampedia.com/leary-general-orders/>.

960 Phillips, “Land,” 5.

961 Phillips, “Land,” 5.

962 Anthony Palomo, *An Island in Agony* (Self-Published, 1984), 248-249.

963 Timothy P. Maga, *Defending Paradise: The United States and Guam: 1898-1950* (New York: Garland, 1988), 197.

houses stood were privately owned. Thus, in effect, the displaced persons were trespassing on private property with the government's permission."⁹⁶⁴

Analyzing the two most populous villages in Guam before the war, Agaña and Sumay, where people were denied returning at the time, one can see how transformation in the name of US national security was detrimental to the CHamoru people. After the war, the US took the village of Sumay and transformed it into what is now known as Naval Base Guam. Taotao Sumay, or people from Sumay, were now scattered throughout other parts of the island. While many CHamorus from Sumay were waiting to return to their homes and living in these refugee camps, they were called to a meeting in April 1945 by the military government, where they were told they would never be able to return to Sumay. They were given the option of relocating to the village of Agat or moving to another developed site. When people refused to move to Agat, the military created a newly developed village on the slopes of Mount Alifan, which was named Santa Rita.

The CHamoru people became resistant to land-takings when the military began taking land almost exclusively for recreational purposes. "In Agaña, roughly five hundred people were displaced when eighty-two lots were condemned for a park, and in Tamuning, sixty hectares of Tumon Beach were condemned for a military recreational center."⁹⁶⁵ In the southern villages, the Navy erected fences around certain beaches and prohibited anyone from swimming or entering the beach area unless they were officers, enlisted men, or their dependents. To defend the military's stance of acquiring private CHamoru land for these recreational centers, Governor Charles Pownall argued that, "to provide adequate athletic facilities for the personnel of the Armed Forces of Guam is of direct concern to the local government in effecting law and order, harmony, and morale."⁹⁶⁶ Critique within the military came from General LeMay who wrote,

They had built tennis courts for the island commander; they had built fleet recreation centers, a Marine rehabilitation center, dockage facilities for inter-island surface craft, and every other damn thing in the world except subscribing to the original purpose in the occupation of those islands.⁹⁶⁷

It is important to note, however, that LeMay's critique was not a statement of sympathy for the CHamoru people or a critique of the recreation areas, per se. Rather, his critique was that the Navy was using limited capital resources and materials to build recreational areas when the Army Air Force wanted those resources applied to building runways for the production line of B-29s that were coming to the Marianas to bomb Japan.⁹⁶⁸

This land taking was made "legal" under US law by Public Law 594, also known as the Guam Acquisition of Lands Act passed by the 79th US Congress in 1946. The legislation reads,

964 Hofschneider, "A Campaign for Political Rights," 134.

965 Guam Echo, "Condemnation," *Guam Echo*, August 31, 1948, 3.

966 Charles A. Pownall, Memorandum to the Guam Congress (Subject: Status of Tumon Bay Area)," April 26, 1948.

967 Rogers, "Destiny's Landfall," 184.

968 Ian Toll, *Twilight of the Gods: War in the Western Pacific* (New York, NY: W. W. Norton & Company, 2020).

The Secretary of the Navy is hereby authorized to acquire in the name, and for the use, of the United States, by purchase or otherwise, land and rights pertaining thereto situated on or within the island of Quam (sic), including interests in fee, leasehold interests with or without option to purchase interests in fee, and rights-of-way and easements both temporary and perpetual for highways, drainage systems, water supply and communication distribution facilities, upon conveyance of title acceptable to him or to such other officer as he may designate.⁹⁶⁹

The phrasing in this legislation of “by purchase or otherwise” would have lasting ramifications as “it would not be long before otherwise would translate to an outright taking of land in the name of military interests.”⁹⁷⁰

The next pivotal event in this history was the Organic Act of Guam, signed in 1950. Per the Organic Act, many in Guam were given US citizenship. This is often seen as the culmination of a long CHamoru struggle for citizenship. While the CHamoru struggle for civil rights was enduring, this is not the complete story. It has also been argued that the granting of US citizenship to the people of Guam helped to essentially sanitize the post-war land takings. For example,

The injustice of actions by the US Navy (which were sanctioned by the US Congress and supported by Presidential Executive Order) in acquiring Guam property was further distorted by the Guam Organic Act’s extension of US citizenship. The US government’s ability to claim that its new citizens in Guam were treated in the same way other citizens were treated with respect to acquisition of property provided support for future US responses to the land-taking concerns and continuing support for the US government’s process for the “return” (and nonreturn) of property that is not required for any readily apparent purpose.⁹⁷¹

Evidence of this can be found in the Hopkins Report. The Hopkins Report, written in 1947, was named after Dr. Ernest Hopkins, who was commissioned by the Navy to head a committee on post-war Guam. The committee was tasked with inspecting the island and recommending any changes in government. Hopkins and the committee heavily recommended citizenship and an Organic Act to help facilitate American control over the island in a time of increasing decolonization post-World War II. Per Hopkins,

Fundamental changes of paramount importance are, of course, the previous two basic conclusions and recommendations; namely citizenship and Organic Acts. With the granting of citizenship and enactment of Organic Acts such as we propose, no one can fairly characterize the government, even if still retained under the general jurisdiction of the Navy Department, as “military

969 United States Code Congressional Service, “Laws of the 79th Congress,” 1946, 768–769.

970 Viernes, James Perez, “Fanhasso i Taotao Sumay: displacement, dispossession, and survival in Guam” (M.A. thesis, University of Hawaii, Manoa, 2008), 64, accessed at <http://hdl.handle.net/10125/20821>.

971 Team Guam, “The Next Liberation: The Return of Guam’s Land,” January 1994, 36.

government.” It is civil government...such government does not cease to be “civil government” in the true sense of the term merely because the executive head and some of his assistants may sometimes wear a military uniform and be responsible to a department of the executive branch of our National Government which is primarily concerned with our national security and defense.⁹⁷²

Some may argue that the relationship between citizenship and the legality of land-takings formed a colonial symbiosis, in which land takings under the US legal system from US citizens holds more legal weight and is more defensible than taking land from aliens or nationals, as was the case after the war until 1950. Being further subsumed under the US political family has the potential for legitimization of land takings. For example, as one of the authors describes of statehood in his 2000 political status report, “However, it is possible that the transition of Guam to a self-governing status would allow the US government to prolong the delays in releasing lands scheduled for disposition because of a reduction or removal of associated international pressures to do so.”⁹⁷³ Thus, one needs to examine the multiple implications not only of political status change, but the advent of the Organic Act. As historian Robert Rogers writes, “Overall, then, Navy and Air Force officers had little to be unhappy about with the Organic Act. On Guam, the military still retained a massive presence and broad authority to accomplish its mission.”⁹⁷⁴

Furthermore, the Organic Act of Guam also outlines what would happen to land controlled by the Department of the Navy, which governed the island. Section 28 of the Organic Act of Guam reads:

(a) The title to all property, real and personal, owned by the United States and employed by the naval government of Guam in the administration of the civil affairs of the inhabitants of Guam, including automotive and other equipment, tools and machinery, water and sewerage facilities, bus lines and other utilities, hospitals, schools, and other buildings, shall be transferred to the government of Guam within ninety days after *the date of enactment of this Act*.

(b) All other property, real and personal, owned by the United States in Guam, not reserved by the President of the United States within ninety days after *the date of enactment of this Act*, is hereby placed under the control of the government of Guam, to be administered for the benefit of the people of Guam, and the legislature shall have authority, subject to such limitations as may be imposed upon its acts by this Act or subsequent Act of the Congress, to legislate with respect to such property, real and personal, in such manner as it may deem desirable.

(c) All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by subsection (a) hereof, or which is not placed under the control of the

972 Martin E. Hopkins, “Hopkins Committee report for the Secretary on the civil government of Guam and American Samoa,” United States, Navy Department, 1947, 6, accessed at <https://hdl.handle.net/2027/umn.31951002668985h>.

973 Bradley, “Economic Impact of Guam’s Political Status Options,” 64.

974 Rogers, “Destiny’s Landfall,” 230.

government of Guam by subsection (b) hereof, is transferred to the administrative supervision of the head of the department or agency designated by the President under section 3 of this Act, except as the President may from time to time otherwise pre-scribe: *Provided, That the head of such department or agency shall be authorized to lease or to sell, on such terms as he may deem in the public interest, any property, real and personal, of the United States under his administrative supervision in Guam not needed for public purposes.*⁹⁷⁵

Two months after the Organic Act was passed, President Harry Truman issued Executive Order 10178 on October 30, 1950. Pursuant to Section 28(b) of the Organic Act, Truman reserved to the US more than 42,000 acres of land for use by military branches. “The following described real and personal property of the United States in Guam is hereby reserved to the United States and placed under the control and jurisdiction of the Secretary of the Navy...”

(a) All of that real property in Guam situated within the perimeter areas defined in the following-designated condemnation proceedings in the Superior Court of Guam, being the same property quitclaimed by the Naval Government of Guam to the United States of America by deed dated July 31, 1950 and filed for record with the Land Registrar of Guam on August 4, 1950.

975 Section 28 of the Organic Act of Guam.

TABLE OF LANDS

CIVIL NO. FACILITY	NAME	AREA IN ACRES
2-48	North Field	4,566.757
5-48	Mt. Santa Rosa Water Reservoir and Supply Lines	9.372
6-48	Mt. Santa Rosa-Marbo Water Lines	5.990
7-48	Tumon Maui Well Site	5.990
2-49	Naval Ammunition Depot	4,803.000
3-49	Primary Transmission Line	44.651
4-49	Mt. Santa Rosa-Marbo Water Line Easement	12.169
5-49	Apra Harbor Reservation	6,332.000
2-50	Acecorp Tunnel	6.450
3-50	Camp Dealy	35.391
4-50	Tumon Bay Rec. Area Utility Lines	0.637
5-50	Agana Springs	24.914

6-50	Asan Point Tank Farm	41.300
7-50	Asan Point Housing	85.032
8-50	Medical Center	137.393
9-50	Agafa Gumas	45.630
10-50	Naval Communications Stations	4,798.682
11-50	Nimitz Beach	11.726
12-60	Command Center	800.443
13-50	Tarague Natural Wells	4,901.100
14-50	Agana Diesel Elec. Generating Plant	5.945
15-50	Mt. Santa Rosa Haul Road, Water Reservoir and Supply Lines, VHF Relay Station, Mt. Santa Rosa Marine Water Line	23.708
16-50	Northwest Air Force Base	4,562.107
18-50	Marbo Base Command Area-Sewage Disposal	60.480
19-50	Loran Station Cocos Island	21.695
20-50	Av-Gas Tank Farm #12	15.322
21-50	Proposed Boundary of NAS Agana, Housing Area #7	1,820.148
22-50	C.A.A. [FAA] Site (Area #90)	37.519
23-50	Tumon Mau Well (Water Tunnel)	3.575
24-50	Tumon Bay Rec. Area (Road & AV-gas Fuel Line Parcel #1)	49.277
25-50	Utility easement from Rt. #1 to Rt. #6 (Coontz Junction)	0.208
26-50	Tumon Bay Rec. Area (Area #78)	65.300
27-50	Marbo base Command	2,497.400
28-50	Mt. Tenjo VHF Station Site	0.918
29-50	Sasa Valley Tank Farm (Area #26)	285.237
30-50	Sub Transmission System Piti Steam Plant to Command Center	17.793
31-50	Route #1 (Marine Drive) (Portion)	28.888
32-50	Sub Transmission System (34 KV Line), Piti Steam Plant to Agana, Diesel Plant and POL System Sasa, Valley Tank Farm to NAS Agana	94.400
33-50	Harmon Air Force Base	953.000
34-50	Radio Barrigada	2,922.000
35-50	AACS Radio Range (Area #30)	25.000
36-50	Water Line Apra Heights Reservoir to Fena Pump Stations & AV-Gas Fuel	37.000
37-50	Fena River Reservoir	2,185.00

(b) The road system and utilities systems described in the said deed between the Naval Government of Guam and the United States of America dated July 31, 1950.

(c) The following described areas: Mount Lam Lam Light; Rear Range Light; Mount Alutom Light; Area Number 35 culverts; Mount Santa Rosa Light; 36 acres of Camp Witek; Adelup Reservoir; Tripartite Seismograph Station Site, Land Unite M. Section 2, Land Square 20; the Power sub-station located on Lot 266, Municipality of Agat, adjacent to Erskine Drive, City of Agat.

(d) Lots 2285-5 and 2206-1 in Barrigada.

(e) All personal property relating to or used in connection with any of the above-described real property⁹⁷⁶

Section 33 of the Organic Act of Guam also gave the President of the United States the continued authority to designate parts of the island as naval or military reservations and to treat Guam as a closed port to vessels and aircraft of foreign countries. In explaining the origin of Truman's Executive Order in relation to the Organic Act of Guam's land provisions, Guam historian Robert F. Rogers, writes, "The Navy and Air Force feared that transfer of all the island's utilities to local control, particularly the generation of electric power, could jeopardize military operations. The Navy, backed by the Department of the Interior, persuaded President Truman to use Section 33 to make a major exception to the Organic Act and retain in military hands the property of installations earmarked for construction."⁹⁷⁷

As a result, many families had their land taken from them.⁹⁷⁸ Beginning in 1947, three years after the war's end, the Naval government created the Land and Claims Commission (which was just a Navy tribunal and not originally overseen by US courts) to determine a "fair" price for the land. According to Penelope Bordallo Hofschneider on the unfair nature of this process,

These Americans determined the value of each parcel of land and then appraised the owner of the government's offer. If the offer was accepted, a purchase was made on the spot. If not, the land was taken by the Government anyway, by condemnation, and the case was referred to the Superior Court. Here, a single judge, an American and employee of the Naval government, decided whether or not the government's offer was fair compensation. The only appeal available to a native landowner was located 10,000 miles away, in Washington, D.C., in the office of the Secretary of the Navy.⁹⁷⁹

CHamoru congressman Joaquin Perez commented on this process, writing, "The Secretary of the

976 "Executive Order no. 10178," October 30, 1950.

977 Rogers, "Destiny's Landfall," 212.

978 The remaining text of this subsection is lifted directly from Kuper's dissertation pgs. 184-187.

979 Hofschneider, "A Campaign for Political Rights," 130.

Navy maintains his office, shall we say, nine thousand miles away, and it is very obvious that a party desiring to appeal cannot economically be present at a hearing...A man is entitled to present his case in the best possible manner. A man is entitled to present his case face-to-face. Robbing a man of that privilege is certainly robbing him of a portion of the justice due him.”⁹⁸⁰ Many CHamorus rejected the offer, and the prices being offered were also economically manipulative. The Navy decided that the price of all the land in the compensation process was to be set at their 1941 values, despite CHamoru rebuttals that the value of the land had increased during the Japanese occupation as it was brought into more large-scale cultivation.

However, the Naval government refused to acknowledge this and kept prices to the 1941 values. When asked about the value of land in Guam, Commander L.J. Watson of the Navy said, “astonishingly low.” He reasons, “It has never been freely sold, and an analysis of recorded instruments show that practically all exchanges of land or sales of land have been between relatives and so on.”⁹⁸¹ For example, for the 15-acre site of the current officers’ housing in Guam, Libugon, which was renamed Nimitz Hill, the Naval government offered \$14.10 total. In Tumon, the military offered a CHamoru landowner \$34.00 for thirty-two months of rent, and one Guam congressman at the time mentioned that a sixty-hectare piece of prime farmland which could yield \$1,000 a month, would only be worth \$3,000 according to the 1941 prices being utilized by the Navy.⁹⁸² CHamorus understood that they were not being treated fairly, in many respects, and that their land was worth exponentially more than what was being offered by the Navy. B.J. Bordallo wrote, “We had an artificially depressed land market resulting from the military’s deliberate policy of isolating Guam from the rest of the world... Since this artificial depression was caused by the Navy’s deliberate closed-door policy, is it fair that just compensation be measured by 1941 Guam values?”⁹⁸³

It was not just the price devaluations that were problematic for CHamorus, it was also the nature of the process. Because the Naval government did not receive the \$1,630,000 appropriated by the US Congress until three years after the war, the process of compensation took a while to commence. However, during this time, the military took the land and did not return it to the original landowners. Essentially, for three years, CHamorus were confused as to what was going on with their land, and much of this land was productive. At the Public Lands Committee Hearings, many raged against the fact that the military condemned, “half or more of the most arable land on the island of Guam, suitable for agriculture and the raising of livestock.”⁹⁸⁴ Hofschneider argues,

Consequently, the future economic recovery of the island, which was basically self-sufficient in

980 Anne Perez Hattori, *Guardians of Our Soil: Indigenous Responses to Post-World War II Military Land Appropriation on Guam* (Chicago: Imprint Publications, 2001), 195.

981 Phillips, “Land,” 9.

982 Hofschneider, “A Campaign for Political Rights,” 131.

983 Phillips, “Land,” 10.

984 United States Congress, House, Committee on Public Lands, Hearings on H.R. 4499: bills to provide a civil government for Guam, 81st Congress, 1st Session, 21-23 November 1949, 151.

production of food before the war, was seriously threatened. In the opinion of various witnesses, the Navy's current policy of leasing idle government property to farmers for a maximum period of twelve months was stifling the island economy. No reasonably intelligent farmer was willing to invest in and cultivate a piece of property that might be taken away from him the next year.⁹⁸⁵

The ramifications of these land-takings are still widely felt in Guam today.

Return of Lands and BRAC

The return of land from the US government to the government of Guam (and subsequently to the original landowners) has been one of the most pivotal issues defining US-Guam relations post World War II. US-Guam relations are predicated on land use and the American military. This issue remains controversial.

Over the years, parcels of land have been returned by the federal government. At one point, it held on to more than half of the island. The Department of Defense holds roughly twenty-seven percent of the island today, with other land held by other federal agencies. However, it is important to note that this return of land does not sanitize the historical injustices involved in the land takings in Guam, and this brief history of land return should not be read in that manner. As noted, "In general, the manner in which federally-held property is returned to Guam is inherently problematic: all existing processes present the government and people of Guam with a choice of no choices."⁹⁸⁶ Furthermore, "the processes of land return with respect to Guam fail to recognize the historical injustices involved in land takings in Guam and the importance of property to a small island community."⁹⁸⁷

It is important to note that the process of land return was not a benevolent transfer of land, and the role of CHamoru resistance cannot be ignored. CHamorus were not simply complacent with the taking of their land. As Robert Underwood exclaims, "land is the one issue that can turn any Chamorro into an activist."⁹⁸⁸ There was a substantial amount of action and activism surrounding the land issue, particularly as it related to the land condemnations. Based on the activism and lobbying efforts of the Guam Landowners Association in 1976⁹⁸⁹, in 1977, the Omnibus Territories Act was passed, which amended the Organic Act to allow the US District Court to review compensation claims for private property condemned by the navy after World War II. In 1980, there were roughly six-hundred land claims before the court. At the time, Antonio Won Pat estimated that compensation for land claims could reach around \$500 million. After the Ninth Circuit Court reversed the dismissal of the first case, many more land

985 Hofschneider, "A Campaign for Political Rights," 154.

986 Team Guam, "The Next Liberation," 24.

987 Team Guam, "The Next Liberation," 24.

988 Underwood, "Afterword," in *A Campaign for Political Rights on the Island of Guam 1899-1950* by Penelope Bordallo Hofschneider, 211.

989 Souder, Laura Torres, *Daughters of the Island*, 1987, 110-111.

claims cases came before the court, with a resulting 1,377 claims for 3,525 parcels of condemned land.⁹⁹⁰ This would all merge into a class-action lawsuit, with John Bohn as chief counsel. Despite the potential \$500 million, in 1983, the Department of Justice offered to settle all claims for \$39.5 million, which the Guam Landowners Association (the organizations of the claimants) found unacceptable. Bohn, however, accepted the offer without consulting the association, which further outraged its members. In explaining his decision to accept the settlement, he said,

Such an offer was the most that he could possibly obtain from the United States Department of Justice, and therefore decided to settle the case. Any attempts to get more money from the United States Department of Justice would have required the involvement of Congress and the President, which would have delayed the settlement for many, many more years. Meanwhile, the original landowners were slowly dying and would never see any of the money.⁹⁹¹

Rogers notes, “A majority of the claimants then accepted the settlement, and money was eventually prorated among the 5,200 former owners and heirs on the basis of *ex post facto* evaluations of their former properties as of the 1940s. Some two-hundred disgruntled claimants, mostly those with the largest claims, refused the settlement; they or their heirs continued legal action.”⁹⁹² This would not end the issue, as other organizations and notable individuals, such as Nasion CHamoru, led by Angel Santos and Eddie Benavente, continued the struggle.

With respect to the process of the US government “returning” federally held land to Guam, the US began identifying “excess land” in 1974⁹⁹³ but picked up the pace as the land claims activism of the Guam Landowner’s Association accelerated. It is significant to note that not all of the more than five-thousand acres identified in 1977 was transferred back to Guam through this process in the subsequent four decades. Additionally, competing federal agency claims (e.g. the US Fish and Wildlife Service) and other restrictions on land use (e.g. safety zones) have blunted a process of greater land use for Guam.

Historically, there were three processes that were used for the return of Guam property. One was the transfer of excess property through a process overseen by the General Services Administration, named the Federal Property and Administrative Services Act. The second process has been through a special Congressional disposal process. The third process is the base closure process, overseen by the Base Relocation and Closure Commission.

Regarding the first process (the GSA process), when a federal holding agency identifies property as being releasable, it submits documents to the Congressional Armed Forces Committee. Pending the committee’s approval, it is deemed excess and reported to GSA, which then conducts a federal screening process. The federal government in returning land has priorities when a federal agency deems land excess. The first is

990 Rogers, “Destiny’s Landfall.”

991 *Torres v. United States*, Civil Case No. 81-0112, John Bohn’s Application for Attorney’s Fees, Costs, and Expenses, 10.

992 Rogers, “Destiny’s Landfall,” 265.

993 US General Accounting Office, “Letter (Restricted) to Congressional Delegate A.B. Won Pat,” June 24, 1980, accessed at <https://www.gao.gov/assets/lcd-80-73.pdf>.

to offer the land to another federal agency. If no federal agency files a request for the property, it is then declared surplus and available for disposal to the public. To remedy this in Guam, then-Delegate Robert Underwood was able to push for the passage of P.L. 106-504, which gave the government of Guam the right of first refusal for excess lands being returned. In business terms, the right of first refusal refers to the contractual right to enter into a business transaction with a person or company before anyone else. If the party with the right of first refusal declines, then other offers can be entertained. A right of first refusal is “a mechanism that gives to a specific party the right to be the first allowed to purchase a particular property if it’s offered for sale. The holder has the right to refuse to buy the property.”⁹⁹⁴ As articulated in P.L. 105-504, “If the government of Guam, within 180 days after receiving notification under paragraph (1), notifies the administrator that the government of Guam intends to acquire the property under this section, the administrator shall transfer such property in accordance with subsection (b). Otherwise, the property shall be screened for further federal use and then, if there is no other federal use, shall be disposed of in accordance with the Property Act.”⁹⁹⁵

Return of land has been decreased and delayed due to national security reasons, particular “contingency” purposes. For example, in 1977 the Navy released the Guam Land Use Plan. Included in the Guam Land Use Plan was the identification of 5,180 acres that were no longer needed for military operations. However, “this plan provided that the 5,180 acres would be utilized as trading stock for private and GovGuam properties needed by the military.”⁹⁹⁶ However, two years later, through the “Implementation Plan for the Guam Land Use Plan,” the policy of using releasable lands as trading stock was changed. In 1986, the Secretary of Defense commissioned L. Wayne Army III, who then served as the Principal Deputy Assistant Secretary of the Navy for Shipbuilding and Logistics, to investigate releasable lands in Guam. Per Army’s report, he recommended a phased, conditional release of 3,548 acres, with the retention of 501 acres. As noted, “no serious efforts were devoted to obtaining the phased release of properties through the General Services Administration and instead, Guam opted to pursue lands through the Congressional route.”⁹⁹⁷

This second route, known as the Congressional route, involves approaching Congress to dispose of properties on the basis of Congressional powers under the Territorial Clause. The pattern of this route was the introduction, review, and approval of a bill that becomes law after passing both chambers of the US Congress and being approved by the president. One significant moment for the return of federal lands back to the government of Guam was H.R. 2144, referred to as the Guam Excess Lands Act. H.R. 2144 was introduced by Delegate Robert Underwood and became Public Law No. 103-339 on October 6, 1994. The law transfers all right, title, and interest of the United States in and to the parcels of land described to the government of Guam public benefit use, by quitclaim deed and without reimbursement.

994 “What is a Right of First Refusal, and How Does it Work?” Landthink, accessed July 28, 2020, accessed at <https://www.landthink.com/what-is-a-right-of-first-refusal-and-how-does-it-work/>.

995 Public Law 106-504: An Act To amend the Organic Act of Guam, and for other purposes, (114 Stat. 2309; 13 November 2020) accessed at <https://www.congress.gov/106/plaws/publ504/PLAW-106publ504.pdf>.

996 Team Guam, “The Next Liberation,” 26.

997 Team Guam, “The Next Liberation,” 26.

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998 PL. 103-339: Guam Excess Lands Act, (108 Stat. 3116: 6 October 1994) accessed at <https://www.govinfo.gov/content/pkg/STAT-UTE-108/pdf/STATUTE-108-Pg3116.pdf>.

NAME	AREA IN ACRES
NAVY PARCELS	
South Finegayan	445.000
Nimitz Hill Parcels 1 and 2B	208.000
NAVMAG Parcel 1	144.000
Apra Harbor Parcel 7	73.000
Apra Harbor Parcel 8	6.000
Apra Harbor Parcel 6	47.000
Apra Harbor Parcel 9	41.000
Apra Harbor Parcel 2	30.000
Apra Harbor Parcel 1	6.000
Asan Annex	17.000
NAVCAMS Beach	14.000
ACEORP Maui Tunnel	4.000
Agat Parcel 3	5.000
AIR FORCE PARCELS	
Andersen South (portion of Andersen Admin. Annex)	395.000
Camp Edusa (Family Housing Annex 1)	103.000
Harmon Communication Annex No. 1	862.000
Harmon Housing Annex No. 4	396.000
Harmon POL Storage Annex No. 2	35.000
Harmon VOR Annex	308.000
Harmon POL Storage Annex No. 1	14.000
Andersen Radio Beacon Annex	23.000
FEDERAL AVIATION ADMINISTRATION PARCEL	
Talofofu "HH" Homer Facility	37.000

In addition, land was also returned to the government of Guam via the Base Realignment and Closure (BRAC) processes of 1993 and 1995. The Base Realignment and Closure Commission was established so that the Department of Defense could close bases with as little congressional or executive interference in the process. The Base Realignment and Closure Commission was established in 1988 to achieve this, and the main impetus for closing bases were “cost savings” and “military value.”

This unique process, designed to save the US government money, was seized on by Guam as a way to effect land return. While most US jurisdictions protested the proposed closure of bases recommended by the Department of Defense, Guam (Team Guam) requested the closure of Naval Air Station (NAS), Agana (Tiyan). Although the BRAC did not include NAS Agana in its 1991 base closure recommendations, Guam again called for its closure in 1993 and the BRAC included the base in its closure recommendations, over the objection of the Navy. There was a local push for local control of Naval Air Station so the land could be productive for the local government and economy. One document that outlines the request for the return of Tiyan is “Na’na’lo i Lugat Tiyan: A call for the Consolidation of the Naval Air Station Agana with Andersen Air Force Base” in April 1993. In this call for this consolidation, the reason is emphasized:

Moreover, the civilian community of Guam seeks the closure of the base facility at NAS Agana in order to expand the essential civil aviation facilities that are the lifeblood of Guam’s economy. Extensive plans for the civilian development of NAS Agana (including ground traffic access through property presently held by the Navy), have been drawn up, but are impeded by continued NAS operations. The implementation of these plans would greatly enhance economic growth while maintaining a state-of-the-art aviation facility available (free of maintenance and operations costs) to the Department of Defense (DOD) in times of national emergency. Continuation of NAS Agana’s operations, at its current site, imposes immediate economic costs for the civilian community and is an impediment to future growth.⁹⁹⁹

In further making the case for why NAS should be consolidated with AAFB, the authors defend Guam by pointing out that inter-branch rivalries within the military (between the US Air Force and the US Navy) should not hinder Guam’s growth. The 1993 BRAC process helps to further show that local desires and actions helped to spur the return of land, essentially overcoming the objections of the Navy when it came to NAS. This should not be an overlooked component of the overall history of land return. Overall, with this process intact, the 1993 and 1995 BRAC rounds affected Guam the most. The 1993 BRAC process resulted in the closure of Naval Air Station in March 1995 and the 1995 BRAC process resulted in the closure of the Ship Repair Facility in September 1997. It is important to note that although the Guam Naval Ship Repair Facility was closed, it is still owned by the Navy today. According to Guam Shipyard President and CEO Mathews Pothen, “Guam’s Ship Repair facility is unique because it is the only closed Navy shipyard or repair facility in the nation not administered by a government.” Pothen added, “The Navy was supposed to transfer the facility to GovGuam within 10 years of closing it, after cleaning up any environmental issues. In 1999, they decided, strategically ... not to transfer the facility. They basically reneged.”¹⁰⁰⁰

999 “Na’na’lo i Lugat Tiyan: A Call for the Consolidation of Naval Air Station Agana with Andersen Air Force Base,” April 1993, 1.

1000 Steve Limtiaco, “Military work is driving the ship repair industry,” *Pacific Daily News*, July 3, 2021, accessed at https://www.guam-pdn.com/news/military-work-is-driving-the-ship-repair-industry/article_0854ca52-dbcc-11eb-8561-e7e1ac7715fd.html.

Recent Land Return

In October 2005, the United States and Japan finalized plans to relocate Marines stationed in Okinawa to Guam. The jointly funded plan sought to relocate up to 30,190 people to Guam and to support the construction of military training and personnel support facilities, to include: live munition firing ranges; non-fire maneuver ranges; expanded airfield operations; headquarters and administrative support; bachelor housing; family housing; supply; maintenance; open storage; and community support facilities.¹⁰⁰¹ Following the completion of the Draft Environmental Impact Statement (Draft EIS) and the Record of Decision (ROD) by the Department of the Navy (DoN) in 2010, the Guam Legislature, in Resolution 275-30, expressed community concerns and called for the following in relation to the proposed buildup,

the buildup shall be limited to the existing footprint of federal land holdings. *No* forced land acquisitions will be permitted; and should there be an unavoidable need to acquire more land, such acquisitions *shall only* be achieved through mutually beneficial negotiations with the landowner; eminent domain/condemnation *shall not* be used to effect such acquisition. As previously stated, this “no condemnation” position was originally presented to the people of Guam by JGPO. To remain with their footprint, the DoD should:

1. pursue joint usage of existing military facilities for operations and training
2. maximize the use of vertical regimes for military facilities and housing in *Finegayan* and elsewhere and
3. place the Marine aviation component at Andersen Air Force Base, which would decrease the impact of the Marine relocation to *Finegayan*;¹⁰⁰²

Stemming from these widespread community concerns and legislative discontent, along with an unfavorable rating of the Draft EIS by the US Environmental Protection Agency and a lawsuit by local organizations, the DoD worked with the government of Guam to develop a set of priorities for Guam, known as the Four Pillars. Most notable of these priorities to the discussion of land takings, is a commitment by DoD to reduce the military’s footprint in Guam, even after the completion of the buildup, as explained below in a 2011 letter from the Under Secretary of the Navy to the governor of Guam:

“...we will pursue a “Net Negative” strategy for DoD-owned land on Guam. The Department is committed to having a smaller DoD footprint on Guam after the military build-up than we currently hold. We will better utilize lands we currently have and return underutilized land to

1001 Jeffrey W. Hornung, *The US Military Laydown on Guam: Progress Amid Challenges* (Washington D.C.: Sasakawa Peace Foundation USA, 2017), 6-11, accessed at <https://spfusa.org/wp-content/uploads/2017/04/The-US-Military-Laydown-On-Guam.pdf>.

1002 30th Guam Legislature, “Resolution No. 275-30,” February 12, 2010, accessed at http://www.guamlegislature.com/COR_Res_30th/Adopted/Res.%20No.%20R275-30%20%28LS%29.pdf.

the Government on Guam.”¹⁰⁰³

In August 2019, Governor Lou Leon Guerrero sent a formal letter, requesting the return of additional lands in order to benefit the people of Guam through “return to the original landowners” and “cultivation and agriculture, cultural and environmental preservation, economic development, affordable housing, and education.”¹⁰⁰⁴ In this letter, the governor requested that a total of 2,869 acres of land and 17,031 acres of submerged land be returned to GovGuam, based on findings from the Guam Economic Development Authority’s Potentially Releasable Federal Lands Report.¹⁰⁰⁵ In a July 2020 response to the governor’s request, the Department of the Navy indicated that thirteen of the thirty-four requested parcels were either already transferred or in progress of transfer, and an additional nine parcels were identified for return to GovGuam. The Navy indicated that, when transferred, the parcels in question would bring the total acreage of returned lands to 807 acres since the DoD’s commencement of the net-negative policy, as well as 6,225 acres in returned submerged lands. The Navy declined to return nineteen parcels, mainly for security or conservation reasons. For example, the return of two parcels (one parcel west of Route 3A and the former Nimitz Golf Course) were denied, citing necessary retention due to “safety concerns and continued mission sustainment and readiness requirements” and “critical support for aviation training and telecommunication requirements.”¹⁰⁰⁶ In August 2020, Lou Leon Guerrero met with US Secretary of Defense Mark Esper, and among other topics, the governor reiterated her request for the return of unused land for the purpose of constructing a modern medical complex, including a new hospital and public health laboratory in Guam.¹⁰⁰⁷ The land identified as the desired site of a new healthcare complex illustrates other land return issues. It demonstrates that the process of land return in itself can also be subject to tensions between the Government of Guam and those in Guam who are original landowners.

Overall, with Guam’s current use by the US military, it is clear that further return of land will be predicated on US national security reasons. Furthermore, the invocation of reserving land for contingency purposes will likely remain if not directly used. This is the reality of a strategically located unincorporated territory, with little political power internationally and within the government of its colonizing power. However, as stated by Team Guam,

We must define reasonable contingency requirements and ensure that contingency needs are not simply a catch-all used to justify the possession of all unutilized federally held property. We must look at nonmilitary federal uses of property in Guam and determine whether such uses are truly

1003 Joint Region Marianas, “Public Notification on ‘Net Negative’ Inventory of Land Parcels on Guam.” 2019, 5, accessed at https://www.ready.navy.mil/content/dam/cnic/jrm/pdfs/Marine_Base/PUBLIC%20NOTIFICATION_NET%20NEGATIVE%202019.pdf.

1004 Daily Post Staff, “Governor asks Navy to return excess lands,” *The Guam Daily Post*, August 15, 2019, accessed at https://www.postguam.com/news/local/governor-asks-navy-to-return-excess-lands/article_0bb8492c-bcfb-11e9-b172-df615a401ef3.html.

1005 Guam Economic Development Authority, “Potentially Releasable Federal Lands,” June 2019, 6, 31, accessed <https://assets.documentcloud.org/documents/6266352/2019-Potentially-Releasable-Federal-Lands.pdf>.

1006 Kenneth J. Braithwaite to Governor Lou Leon Guerrero, letter, July 2, 2020, accessed at https://www.cnic.navy.mil/content/dam/cnic/jrm/pdfs/net-negative/SECNAV%20Letter%20to%20Governor%20of%20Guam%20on%20Excess%20Lands_2JUL2020.pdf.

1007 Radio New Zealand, “Guam Presses US for health investment amid covid crisis,” *Radio New Zealand*, August 31, 2020, accessed at <https://www.rnz.co.nz/international/pacific-news/424843/guam-presses-us-for-health-investment-amid-covid-crisis>.

consistent with the needs and goals of US policy as it affects the territory and people of Guam.¹⁰⁰⁸

Furthermore, summing up much of the government of Guam's attitude toward the problems of land return, Lieutenant Governor Joshua F. Tenorio stated in front of the United Nations Special Committee on Decolonization in 2019, (to quote at length):

Indeed, lands that have been slated for return since 1977, property associated with its utility system when closed in the 1980s, have still not been returned to Guam. And true to the nature of the colonial relationship, lands which the administering Power at various times has declared excess to its needs have been clawed back and even transferred internally between military and non-military (federal) agencies.

It is instructive to note how some of the land identified as excess has in fact not been returned to Guam. Additionally, it is important to deconflict the administering Power's claims of "net negative" land use in Guam as a result of the planned movement of military bases from Japan to Guam. In this later case, the administering Power correctly claims it will not initiate any new takings and that some land identified as excess thirty and forty years ago will be released. Ironically, in this process, the administering Power is also clawing back lands which it had earlier said would be released to Guam.

This process of holding forth and then pulling back from the return of Guam lands is clearly evident where lands were transferred between agencies of the administering Power rather than being returned to Guam. Specifically, over 1,217 acres at Puntan Litekyan was slated to be returned to Guam but was instead claimed by another US entity to create a National Wildlife Refuge. Instead of land being returned to the original landowner families or even the Government of Guam, the administering Power transferred the property internally to another agency on the primacy (under the administering Power's laws) of environmental preservation.¹⁰⁰⁹

Finally, in relating this history to present military build-up projects, he stated, "It is also as testament of the active way in which these authorities obstruct constructive local decision-making while selectively 'protecting' and destroying natural and cultural resources to ends that best suit the administering power. It is as though we are not able to make decisions about our own resources, but the administering power is free to destroy the same if it advances their interests."¹⁰¹⁰

1008 Team Guam, "The Next Liberation," 5.

1009 Joshua F. Tenorio, "Testimony to the United Nations Special Committee on Decolonization," 2019.

1010 Tenorio, "Testimony to the United Nations."

Pertinent Guam Laws

Guam's laws regarding land ownership are some of the most non-restrictive in the Pacific Islands region, with land alienation directly tied to past and present colonial laws. In other Pacific Islands, land ownership restrictions are often tied to ancestry, such as in the Commonwealth of the Northern Mariana Islands and Palau. According to 21 GCA CH. 1 § 1203, "Any person, except an alien, may take, hold, and dispose of real property within Guam, and any person, whether an alien or not, may take, hold, and dispose of personal property within Guam."¹⁰¹¹ § 1267 also states, "The sale, gift, or devise to aliens of lands in Guam is prohibited, except as provided in § 1204 of this Title."¹⁰¹² Furthermore, § 1204 states,

(a) No alien or person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States in the manner provided by law shall acquire title to or own any land in Guam except as hereinafter provided. The prohibition shall not apply to cases in which the right to hold or dispose of lands in Guam is secured by existing treaties to citizens or subjects of foreign countries, which rights so far as they exist by force of any such treaty, shall continue to exist so long as such treaties are in force, and no longer. The prohibition shall not apply to ownership or lease of single family, residential, apartment, or condominium type housing (one unit per alien family) and the land on which such housing is located plus any interest in common elements including land associated with such housing, as delineated in '45106 of this Title. As used in this sub-paragraph "family" shall mean a husband, a wife and dependent children, if any, or a widow or widower and dependent children, if any, or any unmarried alien occupying his or her own dwelling.¹⁰¹³

Thus, as it currently stands in Guam law, there are few restrictions regarding who can own land in the island.

CHamoru Land Trust Commission and Guam Ancestral Lands Commission

Both of these commissions are important in Guam today. They were intended to help remedy historical injustices of land dispossession and are crucial parts of the island's discussions on political status, as each status will have a profound ability to remedy or further dispossess the indigenous people of Guam in relation to their homeland.

The CHamoru Land Trust Act was introduced by Senator Paul Bordallo and passed in the Guam

1011 Radio New Zealand, "Guam Presses US for health investment amid covid crisis," *Radio New Zealand*, August 31, 2020, accessed <https://www.rnz.co.nz/international/pacific-news/424843/guam-presses-us-for-health-investment-amid-covid-crisis>.

1012 Radio New Zealand, "Guam Presses US for health investment."

1013 Radio New Zealand, "Guam Presses US for health investment."

Legislature in 1975, to administer leases for land that the United States had seized from Guam inhabitants during and after World War II and had later returned to the Guam government.¹⁰¹⁴

The Chamorro Land Trust Commission (CLTC) was created through Public Law 12-226 to administer Chamorro Homelands. CLTC offers three types of lease programs which are residential, agriculture and commercial. Applicants of the residential and agriculture programs pay a \$50 one-time non-refundable processing application fee. Whereas commercial applicants have to submit a letter of interest to the Director which would be presented to the board for their approval or disapproval. Lease rates for residential and agriculture leases are a \$1 a year for a term of 99 years. Commercial leases/licenses do not have a set rate; commercial rates are determined based on property appraisals. CLTC's land inventory accounts for 33% of Government of Guam property throughout the island of Guam.

Despite the history of land-takings and the original purpose of the CLTC, its constitutionality was still challenged in the US legal system. For more on this, please refer to the “Indigenous Rights” subsection of this study under the larger “Social Impacts” section.

The Guam Ancestral Lands Commission (GALC) was created by Guam Public Law 25-45 in 1999. The GALC is tasked with “the responsibility to convey title of federal excess lands to original land owners once return to the Government of Guam.”¹⁰¹⁵ According to GALC, its mission is to “Administer the Guam Ancestral Lands Act in order that ancestral landowners, their heirs and descendants may expeditiously exercise all the fundamental civil rights in the property they own; establish a land bank to provide just compensation for dispossessed ancestral landowners; and when appropriate, assume the role of claims facilitator to assist ancestral landowners in pursuit of just remedies.”¹⁰¹⁶ Both of these commissions are important in Guam today as they help to remedy historical injustices of land dispossession. They are important for political status discussions because each status will have to deal with this history of dispossession in its own way. It must be emphasized that the creation of both the Chamorro Land Trust and the Guam Ancestral Lands Commission are directly related to the history outlined above.

Statehood

Land Distribution

Transitioning to statehood is expected to involve the least amount of negotiation regarding land ownership, as Guam will become permanently within the US legal and political system. However, the

1014 Davis v. Guam, United States Court of Appeals for the Ninth Circuit, No. 17-15719, 12, accessed July 28, 2020. <https://cdn.ca9.uscourts.gov/datastore/opinions/2019/07/29/17-15719.pdf>.

1015 Guam Ancestral Lands Commission, “A Report to the Citizens of Guam,” 2014, accessed at https://www.opaguam.org/sites/default/files/galc_ccr14.pdf.

1016 Guam Ancestral Lands Commission, “A Report to the Citizens of Guam.”

transition to statehood from territorial status may still include a discussion of land ownership, particularly between the state government and the federal government. This analysis, although articulated further in a subsequent section, addresses the fact that the US military currently controls military bases in the island.

To begin, an overview of federal land ownership in the entire United States is required. Currently, the federal government owns around 28% of all land in the United States. A majority of the 640 millions of acres held by the federal government is administered by five agencies: the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS), which are all found in the Department of the Interior; the Forest Service (FS) in the Department of Agriculture; and the Department of Defense, for military bases and training ranges.¹⁰¹⁷

Except for the land held by DoD, federal land is primarily related to recreation, preservation, and the development of natural resources. Thus, the types of federally held land can be categorized as:

- a. Public domain lands ceded to the US by treaty, purchase, or conquest
- b. Acquired lands purchased by, given to, exchanged with, or transferred through condemnation proceedings to the federal government
- c. Military acquired lands purchased by the federal government under military acquisition laws
- d. Outer Continental Shelf submerged lands located farther than three miles off a state's coastline, or three marine leagues into the Gulf of Mexico off of Texas and Western Florida

As articulated in a Congressional Research Service report,

The BLM manages 244.4 million acres and the FS manages 192.9 million acres under similar multiple-use, sustained-yield mandates that support a variety of activities and programs. The FWS manages 89.2 million acres of the US total, primarily to conserve and protect animals and plants. In FY2018, the NPS managed 79.9 million acres in 417 diverse units to conserve lands and resources and make them available for public use. The 8.8 million acres of DOD lands are managed primarily for military training and testing.¹⁰¹⁸

Federal ownership of land varies greatly within the states. For example, the federal government only owns 0.3% of the land in Connecticut, while owning 80.1% of the land in Nevada. 60.9% of federally owned land is in Alaska, 45.9% is in the Western states, and only 4.1% of all federal land is located in the other states.

1017 Congressional Research Service, "Federal Land Ownership: Overview and Data." February 21, 2020, accessed at <https://fas.org/sgp/crs/misc/R42346.pdf>.

1018 Congressional Research Service, "Federal Land Ownership."

FEDERAL LANDS AMONG STATES¹⁰¹⁹

1019 This table excludes any land managed by the five agencies in the territories, DOD-managed acreage overseas, submerged lands in the outer continental shelf, and an estimated 662 million acres managed by FWS within the US Minor Outlying Islands, primarily marine areas in the Pacific Ocean.

STATE	TOTAL FEDERAL ACREAGE	FEDERAL ACREAGE %
Alaska	222,666,580	60.9%
Arizona	28,077,992	38.6%
California	45,493,133	45.4%
Connecticut	9,110	0.3%
Georgia	1,946,492	5.2%
Idaho	32,789,648	61.9%
Kansas	253,919	0.5%
Massachusetts	62,680	1.2%
Nevada	56,262,610	80.1%
Utah	33,267,621	63.1%

In the case of Guam, it is expected that in the transition to becoming a state, federal ownership of land in the island will remain the same, at approximately thirty percent. There may be further negotiations for return of excess land, but it is highly unlikely that land needed for US military purposes will be returned in the case of statehood. Thus, it is expected that federal acreage in the island remains roughly the same. However, in the case of increased geopolitical tensions, it is possible that more land will be asked from the state of Guam for national security and military purposes.

Land Ownership

If Guam becomes a state of the union, it is highly likely that current laws regarding who in the state can own real property (commonly referred to as “fee simple” ownership) will not change. Also, as a state, the federal government will still be able to invoke eminent domain. However, it is important to note the state of Guam can also invoke eminent domain, if deemed necessary, as state governments can. Also, the state of Guam, as articulated in the indigenous rights portion of the study, may or may not continue with the CHamoru Land Trust and Guam Ancestral Lands Commission. Since a settlement was reached for

the lawsuit, and with the CHamoru Land Trust Commission implementing the provisions of the settlement, it is possible that this program could continue to exist in the state of Guam.

Lastly, if the state of Guam is accompanied with an increase in military personnel stationed in the island or attracts US citizens from the states to settle in Guam, it could have a negative effect on the local population's ability to become landowners. As a state, Guam's land ownership laws would be open to US citizens. This could lead to the local population having to compete with military personnel (with military housing allowances) and others who move to the state of Guam for housing and land. As a state, Guam's elected senators and representatives in the US Congress would have to find ways to address or mitigate this through legislation.

Land Use

It is highly expected that federally held land used for military purposes will continue. Guam would have to ensure that any land laws made at the state level are in accordance with federal law. The one factor that the people of Guam must examine is whether the right of first refusal established, by P.L. 106-504, will remain. If the government of Guam loses the right to first refusal upon becoming a state, this means excess real property will first be examined for another federal agency's use, then to private interests, before the possibility of acquisition by the state government. Another possibility under statehood could be the expansion of land used for national security and military purposes in the case of increased geopolitical tensions. In this case, however, the effect of having two senators in the US Senate may also serve as an impediment to military land use expansion if it is too disruptive to civilian use.

Independence

Overall, independence, by nature of the political status, provides for the widest latitude of control over the land and decisions on how to treat the land. Control of one's territory is a characteristic of a country, and under independence, Guam would have this control. This is different from the history outlined above, in which control and use of Guam's land was always usurped by a colonial power. Under independence, by nature of the political status itself, the United States will no longer have sovereignty and Guam will no longer be "US soil." This does not mean Guam and the US will not have a relationship, but rather that the source of this relationship changes.

As will be discussed further, the core difference, even if Guam chooses to have US bases, is that it will no longer be a federal-territorial relationship. Rather, under independence, US claims to land in Guam would be null and void, as it would no longer be the sovereign over Guam. Unless some agreement is made in the granting of independence, the US will return federally held land to the government of an independent Guam for its use, as it would likely no longer have any claim to land in the island. Any further US land use would be as a result of diplomatic relationships, negotiations, and agreements between two sovereign countries rather than the current operational unilateralism by the US military in Guam today.

Essentially, use of Guam’s land by the US under independence would be due to explicit permission by the independent country of Guam. Power politics will definitely come into play in these negotiations, with the US being able to hold many “carrots and sticks” to influence any decision regarding basing. However, if correct decisions are made, the government of an independent Guam would have opportunity to use the land beneficially.

Land Ownership

Guam, as an independent country, would possess sovereignty to craft its own land tenure laws. The government of an independent Guam would have a range of options regarding land alienation in both residential and commercial development that it would have to decide and the tying of land ownership to citizens of the country.

Land Distribution and Use

Independence offers the most flexibility when it comes to land distribution and use. As a sovereign country, Guam would craft its own laws and policies related to land. However, this maximum degree of flexibility requires significant attention and effort. Perhaps the most significant decision is related to existing US military bases in the island. One option would be to negotiate with the US to maintain the military bases in exchange for protection or other sources of aid. This is possible if independence is achieved within a geopolitical environment in which it is in the US national interest to keep bases open in Guam. If this is the case, it should be noted again that any “sovereign” claim the US would have in Guam would be supplanted by Guam’s sovereignty. Negotiations regarding land use in an independent Guam would be between a sovereign Guam and the United States, and not the United States and a territory. This is an important distinction between independence and the current unincorporated territorial status.

If the US and Guam enter into arrangements to maintain bases, but reduce the military footprint, this land could go to the government of Guam for public use or private interests. In addition, if the independent country of Guam ended the military footprint in the island, the entirety of that land could be used for other purposes. The economics of closing bases and converting the land to other uses would require planning. Guam would want to mitigate the temporary loss of jobs that will need to be recovered via the development of new industries in the island. Thus, it is helpful to look at examples of former military sites that have been repurposed, even if these sites are located in the United States. The US Department of Housing and Urban Development created the “Guidebook on Military Base Reuse and Homeless Assistance” to assist communities in planning how to reuse the military installations closed in their jurisdictions due to BRAC. It reports that many communities have successfully converted these former installations to civilian uses such as parks, business centers, and market-rate & affordable housing.”¹⁰²⁰

1020 US Department of Housing and Urban Development, “Guidebook on Military Base Reuse and Homeless Assistance,” 2006, 1, accessed at <https://files.hudexchange.info/resources/documents/MilitaryBaseReuse.pdf>.

Furthermore, “former military bases offer communities a distinct set of redevelopment opportunities due to their existing infrastructure, such as airstrips, roads, water, electric service, and so on, stemming from their former military functions.”¹⁰²¹ Repurposing the land will present challenges, but redevelopment options with significant economic effects are possible. Another document, produced by the Environmental Protection Agency, titled, “Turning Bases Into Great Places: New Life for Closed Military Facilities” describes this further. It states,

A completely or partially closed base may offer a community a large parcel of land for redevelopment—and the enticing potential for a new and enduring neighborhood that brings jobs, residents, visitors, and tax revenue. By accommodating growth on previously used land, the property allows the community to add new businesses and residents without having to build on undeveloped land elsewhere in the area.¹⁰²²

The authors of the report go on to list a few important traits that led to successful base redevelopment. These include early planning for redevelopment; listening to the community’s desires and ideas; ensuring public involvement in redevelopment; balancing the needs of jobs and homes; and using the location and infrastructure of the site to the best advantage. Similarly, in another report titled, “Organizing Your Planning Effort: The First Steps in Installation Redevelopment,” the authors discuss the development of a reuse plan. It states the following steps should be taken:

- Inventory the site and physical resources (facilities/land use, utilities, surrounding area, transportation, environmental constraints)
- Assess market forces and economic conditions (regional and local demographic and economic data, demand for various land uses and a competitiveness analysis)
- Develop a community vision for the site that focuses on community needs
- Develop reuse alternatives (land use, users, circulation, open space, education)
- Match redevelopment alternatives with property disposal methods
- Select and refine an alternative
- Develop a plan of action¹⁰²³

It is also important to note that developing a land use plan for the repurposing of land the US military currently holds is contingent on the exact parcels of land and facilities to be given back to the country of Guam, and in what condition. For example, the return of a naval facility versus the return of the airstrip

1021 Amanda Johnson Ashley and Michael Touchton, “Reconceiving Military Base Redevelopment: Land Use on Mothballed US Bases,” *Urban Affairs Review* (May 2015): 3, accessed at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1022.5112&rep=rep1&type=pdf>.

1022 United States Environmental Protection Agency, “Turning Bases Into Great Places: New Life for Closed Military Facilities,” 2006, 2, accessed at https://www.epa.gov/sites/production/files/2014-07/documents/bases_into_places.pdf.

1023 Yvonne Dawson, “Organizing Your Planning Effort: The First Steps in Installation Redevelopment,” *NAID, An Association of Defense Communities* (May 2005): 12, accessed at <https://knowledge-online-defense-communities.knowledgeowl.com/help/organizing-your-planning-effort-the-first-steps-in-installation-redevelopment>.

in Andersen Air Force Base will have varying potential uses. Another factor is how much cooperation occurs between the US federal government and the government of the country of Guam. Thus, any final determinations must be made when the sites to be returned are ultimately identified.

Lastly, it should be mentioned that the northern half of the island, where Andersen Air Force Base sits, is economically valuable land that the government of Guam does not get to capitalize on currently as an unincorporated territory.

The “best” land in Guam for development purposes is in the northern half of the island, but a substantial portion of this land is held by the US federal government, and therefore unavailable for civilian economic use. Further, much of the land owned by the US Air Force in the northern half of the island is left idle. The sprawling air base also covers much of the northern aquifer, and groundwater pollution from military activities there have forced the closing of several wells in recent years. In this regard, a substantial portion of Guam’s most economically valuable land goes unused because of land tenure restrictions. It was estimated in 1992 that the holdings of idle land by the federal government in Guam cost the local government as much as \$69 million annually in foregone government revenues alone.¹⁰²⁴

Overall, as an independent country, Guam would have the sovereignty to control and the ability to negotiate which land is used and how. However, negotiations with the United States must still be considered. Furthermore, whether bases remain or not, Guam should have a plan for the land’s use.

Free Association

Land Ownership

Like the previous section on independence, as a freely associated state, Guam would have the ability to craft its own laws regarding real property/land ownership. If the island has its own citizenship and is no longer sovereign American soil, the country may craft laws restricting land ownership to citizens of the freely associated state of Guam. This should not be misconstrued to read that, “US citizenship will bar one from owning land,” as there is the possibility of dual citizenship or the chance that the freely associated state of Guam places few restrictions on land ownership.

Through an examination of the other three freely associated states, one can see that land ownership is tied to citizenship in each. For example, Article XIII, Section 8 of the Palauan constitution reads, “Only citizens of Palau and corporations wholly owned by citizens of Palau and may acquire title to land or waters in Palau.”¹⁰²⁵ The constitution of the Federated States of Micronesia has a similar provision: “A noncitizen, or a corporation not wholly owned by citizens, may not acquire title to land or waters

1024 Bradley, “Economic Impact of Guam’s Political Status Options,” 5-6.

1025 Article XIII, Section VIII of the Constitution of the Republic of Palau, accessed at <http://www.pal.gov/pw/constitution.pdf>.

in Micronesia.”¹⁰²⁶ Lastly, Article X, Section 1 of the Constitution of the Marshall Islands reads, “Title to land or any land right in the Republic of the Marshall Islands may be held only by a citizen of the Republic, a corporation wholly owned by citizens of the Republic, the Government of the Republic or a local government, or a public corporation or other statutory authority constituted under the law of the Republic.”¹⁰²⁷ Thus, Guam could enact similar land alienation laws with respect to ownership for citizens or corporations of the country.

Land Use and Distribution

In the case of free association, it is highly expected that current military bases would remain in the island. The exact ramifications of the land to be used will most likely be spelled out during the negotiation period between Guam and the United States. Land use and distribution in a freely associated Guam further requires an analysis of the Compacts of Free Association between the United States and the current freely associated states, which Guam’s potential compact or any other legal instrument may resemble. It should be noted that with free association, lands that the US government uses, based on a negotiated agreement, would be used as an extension of the freely associated state of Guam’s sovereignty. The manner in which Guam provides for US land use would be a decision by the freely associated state of Guam. The manner that this is executed, whether it be sale, lease, etc., would be contingent on a Guam-US agreement.

In regard to land use as it relates to the defense aspects of the agreement, the Federated States of Micronesia’s Compact reads:

If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Federated States of Micronesia Islands in addition to those for which specific arrangements are concluded pursuant to section 321(a), it may request the Government of the Federated States of Micronesia to satisfy those requirements through leases or other arrangements. The Government of the Federated States of Micronesia shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.¹⁰²⁸

The government of the Federated States of Micronesia is not required to grant the request, although it must at the very least “sympathetically consider” it, among other procedural steps. Also, of note, is that the use of land in the FAS, as negotiated in the COFA, is tied to economic assistance packages, and Guam could negotiate for similar economic benefits with military land use.

Immediately following this clause is a provision recognizing the importance of land in the FSM and

1026 Article XIII, Section IV of the Constitution of the Federated States of Micronesia, accessed at <http://www.fsmlaw.org/fsm/constitution/article13.htm>.

1027 Article X, Section 1 of the Constitution of the Republic of the Marshall Islands, accessed at https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

1028 Federated States of Micronesia, Compact of Free Association, 29.

mandating the US to request the minimum land area required for fulfillment of this defense purpose. The provision reads,

The Government of the United States recognizes and respects the scarcity and special importance of land in the Federated States of Micronesia. In making any requests pursuant to section 321(b), the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.¹⁰²⁹

In negotiating an agreement with the United States, Guam could ensure the presence of similar provisions to provide for US-Guam defense interests while ensuring control and limited use of the island's vital land resources. Guam could pursue provisions that are more restrictive than those of the FSM and the RMI's compacts, to limit the United States' use of additional land resources. However, the existing presence of US military bases in the island may present a negotiating obstacle to the return of Guam property by the US government.

1029 Federated States of Micronesia, Compact of Free Association, 30.

LAND	
STATUS	EFFECTS
<i>Statehood</i>	<ul style="list-style-type: none"> • No foreseeable change in land ownership laws or land distribution. • Potential for improved land use, protection, and management policies. • Likely loss of right of first refusal with returned federal lands. • Potential for continued existence of CHamoru Land Trust Commission due to recent settlement of lawsuit.

<p style="text-align: center;"><i>Independence</i></p>	<ul style="list-style-type: none"> • Greatest potential for land return, likely with short-term negative economic effects, but with subsequent economic opportunities. • Great potential for land ownership reform and improved use, protection, and management policies. • Potential for defense agreement with the US. In the event of defense agreement. Land controlled by the US would be negotiated. With land return/base closure, environmental cleanup may be necessary for new development.
<p style="text-align: center;"><i>Free Association</i></p>	<ul style="list-style-type: none"> • Great potential for land ownership reform and improved use, protection, and management policies. • Highly likely defense agreement with US, but with limited-to-no land return expected. With land return/base closure, environmental cleanup would be necessary for new development. • Potential land use conflict with US defense interests. Likely implementation of zoned land use systems with exclusive and joint-use areas.

Natural Resources and Ocean Resources

Natural resources are defined by the Organisation for Economic Co-operation and Development (OECD) as, “natural assets (raw materials) occurring in nature that can be used for economic production or consumption.”¹⁰³⁰ Natural resources can also be considered to be “stocks of material that exist in the natural environment that are both scarce and economically [and culturally] useful in production or consumption, either in their raw state or after a minimal amount of processing.”¹⁰³¹ When considered together, these definitions reflect how natural resources are conceptualized to comprise part of a place’s natural capital. They are the resources that hold the ability to contribute to the sustenance of a population and as well as contribute toward economic growth. This section operates from the understanding that in the region of Oceania, natural resources must also account for the ocean. The definitions of natural resources provided above can encompass the ocean, since it is generally considered to be a “natural resource” within environmental research. However, given the significance of the ocean—as a host to huge reservoirs of biodiversity, a crucial source for global food and human health, a connector between land environments and marine environments—this section considers the ocean as a distinct resource that warrants additional examination alongside other “natural resources.”¹⁰³² The United Nations also uses a particular classification of “oceans, seas and marine resources” that focuses on integrated and essential elements of the Earth’s ecosystems.¹⁰³³ Therefore, this broader definition from the UN includes the economic and intrinsic values of resources found on both land and in the ocean.

Despite the limitations of extant data on the economics, in this section, a focus on natural and ocean resources provides a more expansive understanding of how political status could affect the ownership,

1030 Organisation for Economic Co-Operation and Development, “Natural Resources,” Glossary of Statistical Terms, 2001, accessed at <https://stats.oecd.org/glossary/detail.asp?ID=1740#:~:text=Natural%20resources%20are%20natural%20assets,Context%3A&text=They%20are%20subdivided%20into%20four,water%20resources%20and%20biological%20resources>.

1031 World Trade Organization, “World Trade Report,” 2010, 46, accessed at https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report10_e.pdf.

1032 United Nations Sustainable Development Goals, “Oceans & Seas,” accessed at <https://sustainabledevelopment.un.org/topics/oceanandseas>.

1033 United Nations Sustainable Development Goals, “Oceans & Seas.”

usability, environmental impact, governance, and conservation of resources for Guam. The issues of land holding, lack of sustainable land use management on US federally held properties, and US federal immigration policies are three key issues that also impact resource management for the island.

Land and Ocean Boundaries

Political boundaries bring different areas of concern for islands versus landlocked countries. One of the key considerations is maritime boundaries, which can raise questions about how to distinguish jurisdiction and responsibility for maintaining natural resources between islands with different political statuses. According to the US Department of State, maritime boundaries are considered vital for maintaining peaceful borders and clearly delimiting “rights and interests with respect to fishing and marine living resources, mineral and hydrocarbon resources, freedom of navigation, maritime domain awareness and security, and other uses of the sea.”¹⁰³⁴

The US has established maritime boundary treaties and other international agreements in the Micronesia sub-region to understand and delimit boundary differences in the subregion. For example, in 2014, the US signed a treaty with the Federated States of Micronesia with the purpose of establishing maritime boundaries between the two countries and identified “the relevant United States territory as Guam” to further delimit a maritime boundary.¹⁰³⁵ The US–FSM treaty titled “Treaty Between the Government of the Federated States of Micronesia and the Government of the United States of America on the Delimitation of a Maritime Boundary,” was signed at the 45th meeting of the Pacific Islands Forum. This “Micronesia Maritime Boundary Treaty establishes a single maritime boundary in the Pacific Ocean with respect to the exclusive economic zone (EEZ) and continental shelf between Guam and several Federated States of Micronesia (FSM) islands.”¹⁰³⁶ Yet, Guam was not part of this treaty signing at the forum, nor was Guam fully consulted on the matter.

This international treaty agreement serves the national interests of each country and strengthens their cooperation in the Pacific. The treaty also set limits “in a manner that closely follows limit lines long asserted by the United States for our exclusive economic zone” and involved the US achieving “a small gain in maritime area” with ratification.¹⁰³⁷ Of concern was that this treaty was executed without the meaningful consent of the people of Guam, which meant keeping the island out of the engagement over one of its own maritime boundary delimitations.¹⁰³⁸

In his “Analysis of US-FSM Maritime Boundary Agreement,” Julian Aguon argued that the US had

1034 US Department of State, “US Maritime Boundaries: Agreements and Treaties,” August 5, 2014, accessed at <https://www.state.gov/u-s-maritime-boundaries-agreements-and-treaties/>.

1035 United States Congress, “Treaty between the Government of the United States of America and the Government of the Federated States of Micronesia on the Delimitation of a Maritime Boundary, signed at Koror on August 1, 2014,” Senate Executive Report 115-2, 2, accessed at <https://www.congress.gov/115/crpt/erpt2/CRPT-115erpt2.pdf>.

1036 United States Congress, “Treaty on the Delimitation of a Maritime Boundary,” 2.

1037 United States Congress, “Treaty on the Delimitation of a Maritime Boundary,” 4.

1038 Louella Losinio, “Guam not consulted by US over FSM Maritime Boundary Treaty,” October 10, 2014, accessed at <http://www.pireport.org/articles/2014/10/10/guam-not-consulted-us-over-fsm-maritime-boundary-treaty>.

“a duty to consult the people of Guam before formally executing a maritime boundary delimitation that potentially divests them of inestimable marine resources... This duty results from the status of Guam as a US-administered non-self-governing territory, whose people are duly seized of both the right of self-determination and the right to hold the United States accountable to its duty to honor the primacy of their interest including the interest of retaining their rightful natural resources.”¹⁰³⁹ Aguon’s analysis notes how international law has dealt with the number of overlapping boundaries and how political status plays a role in governance of natural and ocean resources. Aguon focused on the importance that the United Nations General Assembly (GA) has placed on the retention of natural resources and the duty of administering powers to ensure their non-self-governing territories, including Guam, are protected in the integrity of their natural resources. These elements of international law, self-determination, and governance of resources are addressed in the subsequent sections on the international regulations and on the Mariana Trench.

Currently, the US restricts Guam from fully controlling its natural resources, in contravention of international norms with respect to the peoples of a non-self-governing territory.¹⁰⁴⁰ The US has even determined Guam’s political and physical boundaries in relation with other Pacific Island Countries (PICs) in the region. Although it is a violation of international law for a governing power to determine these boundary and border issues, under the current status, the US asserts its sovereignty to make these decisions for Guam. The US government forges political agreements, enters into treaties, and makes decisions about the island’s maritime boundaries and limits. The maritime boundary treaty between the US and the Federated States of Micronesia (FSM) established a boundary that may facilitate understanding between the countries of the US and the FSM, though it raises questions about Guam’s ability to benefit from, protect, use, and maintain the natural resources within political boundaries of both land and ocean¹⁰⁴¹ With issues as important as understanding the boundaries of Guam, any future political relationship moving forward should anticipate Guam being an active participant in making decisions available under the political status options.

International Law/Preservation

To address the issues of ownership and control when it comes to natural resources for Guam, it is important to consider the role of international law. International law privileges a country’s sovereign rights over how it uses or exploits its own natural resources.¹⁰⁴² International law can consider natural

1039 Attorney Julian Aguon to Honorable Judith T. Won Pat, Memorandum on Analysis of US-FSM Maritime Boundary Agreement, 27 September 2014, Law Office of Julian Aguon, Accessed at http://www.guamlegislature.com/Mess_Comms_32nd/Doc%2032GL-14-2107.pdf.

1040 See discussion in this study at “ASSESSMENT OF SELF-GOVERNANCE SUFFICIENCY IN CONFORMITY WITH INTERNATIONALLY-RECOGNIZED STANDARDS” by Carlyle Corbin.

1041 “Senate Consideration of Treaty Document 114-13(A),” accessed at <https://www.congress.gov/treaty-document/114th-congress/13?s=1&r=7>. This arrangement looks particularly suspect since the US has exercised rights related to Guam outside of the international norm, with FAS entities over whom it has foreign affairs primacy.

1042 United Nations General Assembly, “Resolution 1314 (XIII),” 1963, accessed at https://brill.com/view/journals/ajls/6/1/article-p69_4.xml?language=en.

resources through some key frames about policies and problems. As Richard Bilder, Professor of Law at the University of Wisconsin-Madison, explains, international law addresses:

1. the ways in which differing legal concepts of national property rights affect the structure of international resource arrangements
2. the ways in which disputes about international law reveal underlying differences in views of equity or fairness in international natural resource arrangements
3. the ways in which international law can help countries reach cooperative arrangements for dealing with natural resource problems.¹⁰⁴³

It is important to consider the flexibility and possibility that international law offers to address natural resource governance, including the issues of conservation or preservation and land use and management. Given how the US exerts its sovereign power over Guam, albeit inconsistent with international law, the island is currently limited in its capacity for self-governance of these issues under the current status.

Therefore, when considering any of the different political status options, international law can help Guam in the consideration of innovative uses of its natural resources and how it might address its ocean resources. Overall, ocean resources are vast. Therefore, Guam will need to seriously consider the regulatory issues, management and conservation opportunities.

Ocean Resources

Jurisdiction over the Exclusive Economic Zone (EEZ) generated by Guam

The existence of, and access to, Guam's natural and ocean resources is currently influenced by US jurisdiction over the exclusive economic zone generated by Guam. Exclusive economic zones are generally defined as follows:

Under the United Nations Convention on the Law of the sea, an exclusive economic zone (EEZ) is a sea zone over which a state has special rights over the exploration and use of marine resources. It stretches from the seaward edge of the state's territorial sea out to 200 nautical miles from its coast.¹⁰⁴⁴

This definition connects international law with the consideration of maritime boundaries and economic realms. From this general definition and its entanglement with international law, consider that the EEZ

1043 Richard Bilder, "International Law and Natural Resources," *Natural Resources Journal* 20, no. 451 (1980):available at <https://digitalrepository.unm.edu/nrj/vol20/iss3/3>

1044 United Nations Office for the Coordination of Humanitarian Affairs, "Asia-Pacific: Pacific Island Countries and Territories and Exclusive Economic Zones," June 2015, accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_ROAP_Pacific_v7_110215.pdf.

refers to the “zone where the US and other coastal nations exercise jurisdiction over natural resources.”¹⁰⁴⁵

From the US perspective, the EEZ around the island functions over natural resources and ocean resources. The EEZ rights specifically provides:

- Sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, whether living and nonliving, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- Jurisdiction as provided for in international and domestic laws with regard to the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment; and
- Other rights and duties provided for under international and domestic laws.¹⁰⁴⁶

These US claims to Guam’s EEZ are exclusively tied to US sovereignty, notwithstanding the inconsistency with international law mandating the ownership and control of natural resources by the non-self-governing territories. However, if Guam was an independent country, it would have sovereign rights to the resources in the EEZ and jurisdiction for the activities within the area. One example for Guam’s natural and ocean resources relates to the possibility of future exploration and mineral resources within the EEZ. These can have an impact on the economy. This subsection outlines some of Guam’s attempts to lay claim and rights to its surrounding waters and, by extension, the ocean resources within those waters.

As an independent country or freely associated state, Guam would be affected by international law pertaining to EEZs, especially as reflected in UNCLOS (even if not becoming a state party to UNCLOS). For example, Guam will not be able to unilaterally determine its own maritime boundaries. If Guam’s maritime zones overlap those of an adjacent country, then Guam and that country will be expected to agree on common boundaries between them. Similarly, there are strict rules under international law pertaining to the activities in the EEZ that the relevant country has jurisdiction over and exercises sovereign rights thereof. Even an independent Guam could not establish its own laws regarding the EEZ absent those considerations. For example, Guam’s exploitation of fish stocks in its EEZ must, in accordance with UNCLOS and customary international law, take into consideration the interests of other countries in also exploiting those fish stocks, especially if Guam is unable to fully exploit those fish stocks to a sustainable level on its own.

1045 National Oceanic and Atmospheric Administration, “What is the EEZ?” November 13, 2019, accessed at <https://oceanservice.noaa.gov/facts/eez.html>.

1046 National Oceanic and Atmospheric Administration, “What is the EEZ?”

United Nations Convention of the Law of the Sea (UNCLOS)/ General Assembly Resolutions

The Law of the Sea Convention states the following regarding non-self-governing territories (NSGTs):

In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development.¹⁰⁴⁷

This statement from the UNCLOS is supplemented by various General Assembly Resolutions regarding natural resources and non-self governing territories. To this day, the United Nations General Assembly continues to affirm that an administering power does not have the right to exploit the natural resources of NSGTs. Indeed, a claim from a colonial power to have sovereignty over its colony's resources is an anathema to the very concept of decolonization. For example, on Dec. 10, 2020, the General Assembly adopted the resolution "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories." In this resolution, the General Assembly reaffirmed that "the natural resources are the heritage of the peoples of the Non-Self-Governing Territories, including the indigenous populations."¹⁰⁴⁸ Action items of the resolution include:

- *Reaffirms* the right of the peoples of the non-self-governing territories to self-determination in conformity with the Charter of the United Nations and with General Assembly resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and with other relevant resolutions of the United Nations, as well as their right to the enjoyment of their natural resources and their right to dispose of those resources in their best interest
- *Reaffirms* the responsibility of the administering powers under the charter to promote the political, economic, social and educational advancement of the non-self-governing territories, and also reaffirms the legitimate rights of their peoples over their natural resources
- *Reaffirms its concern* about any activities aimed at the exploitation of the natural resources that are the heritage of the peoples of the non-self-governing territories, including the indigenous populations, in the Caribbean, the Pacific and other regions, and of their human resources, to the detriment of their interests, and in such a way as to deprive them of their right to dispose of those resources
- *Once again urges* the administering powers concerned to take effective measures to safeguard

1047 United Nations General Assembly, "Convention on the Law of the Sea," Final Act of the UNCLOS, Annex I, Resolution III, 1(a), December 10, 1982, accessed at https://www.un.org/depts/los/convention_agreements/texts/final_act_eng.pdf.

1048 United Nations General Assembly, "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories," Resolution, A/Res/75/103, 2 & 4.

and guarantee the inalienable right of the peoples of the non-self-governing Territories to their natural resources and to establish and maintain control over the future development of those resources, and requests the administering powers to take all steps necessary to protect the property rights of the peoples of those territories in accordance with the relevant resolutions of the United Nations on decolonization;¹⁰⁴⁹

Blue Ocean Law, headed by Guam attorney Julian Aguon, emphasized the importance of natural resources and self-determination. In their report, “Enduring Colonization: How France’s Ongoing Control of French Polynesian Resources Violates the International Law of Self-Determination,” they write,

A basic constituent of the right of self-determination is the right to permanent sovereignty over natural resources (PSNR). PSNR guarantees all people the right “for their own ends, to freely dispose of the natural wealth and resources” within their territories. Well-established in international law, PSNR operationalizes the economic aspects of self-determination—the right to freely pursue economic, social, and cultural development...Likewise, the administering powers of non-self-governing territories have special duties to protect and promote the PSNR of the peoples within their territory.¹⁰⁵⁰

Guam is recognized by the UN as one of the world’s non-self-governing territories and therefore this language is applicable to Guam.

Regarding UNCLOS, the US would presumably follow the UNCLOS by ensuring that the “rights and interests” of the convention would be implemented in a way that benefits the “well-being and development” of the people of Guam. However, the US signed, but did not ratify, the treaty and as such is not considered a party to the UNCLOS. Despite the lack of ratification, the US takes the view that “with limited exceptions the convention reflects the rules of customary international law...The US actively seeks the observance of those rules by all states.”¹⁰⁵¹ Without privileging the power of UNCLOS to hold the US accountable, the treaty situation raises consideration for Guam’s approach to a political status option that would account for international law and legal frameworks in the future.

A key element of the UNCLOS is the basis that it provides for conducting rules of natural resource jurisdiction within the sea, which is distinct from issues concerning freedom of navigation. The UNCLOS allows “the US to conserve, regulate, and exploit the resources of our neighboring waters and continental shelf for the benefit of the environment and economy. America’s commercial and military position in the world is preserved by the rule of law at sea.”¹⁰⁵² Guam’s current political status means that it is unable to

1049 United Nations General Assembly “Economic and other activities,” 2-3, 4.

1050 Blue Ocean Law, “Enduring Colonization: How France’s Ongoing Control of French Polynesian Resources Violates the International Law of Self-Determination,” July 2019, 21.

1051 John Burgess, Lucia Foulkes, Philip Jones, Matt Merighi, Stephen Murray, Jack Whitacre (eds.), “Law of the Sea: A Policy Primer,” Fletcher School of Law and Diplomacy, Tufts University, 2017, 2, accessed at <https://sites.tufts.edu/lawofthesea/table-of-contents/>.

1052 Burgess, et al., “Law of the Sea,” 2.

directly sign or ratify the UNCLOS. The island is directly impacted by how the US engages with other countries that are a part of the treaty agreement.

Under the UNCLOS, military activities in the EEZ or high seas are not explicitly regulated. Additionally, although contested by some, the US asserts the right to conduct military activities within the EEZs of other States.¹⁰⁵³ Importantly, the UN does not consider a NSGT to be part of a state's (country) sovereign natural resource jurisdiction or EEZ. Internationally lawful military activities can include the establishment of Air Defense Identification Zones (ADIZ), surveillance and intelligence activities, and military marine data collection.¹⁰⁵⁴ While these military activities are considered to be lawful, they have also been a source of contention and concern among countries when conducted within another country's EEZ. Indeed, military activities in EEZs are considered to be "of paramount importance to the US and is a source of continuing friction with coastal states that seek to expand their authority in their EEZs."¹⁰⁵⁵ For example, the US has conducted "sensitive reconnaissance operations (SRO)" within the EEZ of China. These operations have been challenged and intercepted by foreign military aircraft, often involving dangerous incidents that illustrate how countries may attempt to deter US aircraft from engaging in SRO.¹⁰⁵⁶

Overall, options for Guam's political status are essential to address sovereign rights over natural resources. Political status options also provide potential for Guam to access international legal provisions that regulate the environment, economy, and military issues at sea.

Mariana Trench

The Mariana Trench can play an important part of Guam's ocean resources under any political status. "The Mariana Trench is located approximately six miles below the ocean surface in the subduction boundary east of Guam."¹⁰⁵⁷ The trench is a crescent shaped arc in the Earth's crust that measures more than 1,500 miles (2,550 kilometers) long and forty-three miles (sixty-nine kilometers) wide on average.¹⁰⁵⁸ The distance between the trench's deepest point and the surface of the ocean has been measured at nearly seven miles (eleven kilometers) deep.¹⁰⁵⁹

Known as "Challenger Deep," this "deepest part of the Mariana Trench and the greater ocean," is "about 7,000 feet deeper than Mount Everest is tall."¹⁰⁶⁰ In 2010, during a NOAA survey, the Challenger Deep was pegged at 36,070 feet (10,994 m), as measured with sounds pulses sent through the ocean.¹⁰⁶¹

1053 Burgess, et al., "Law of the Sea," 31.

1054 Burgess, et al., "Law of the Sea," 31.

1055 Burgess, et al., "Law of the Sea," 31.

1056 Burgess, et al., "Law of the Sea," 34.

1057 US Department of the Navy, "Mariana Islands Range Complex Environmental Impact Statement/Overseas Environmental Impact Statement," vol 1, January 2009, 3.1-9, 3.6-11, accessed at https://www.sprep.org/attachments/NMarianas_13.pdf.

1058 "The Mariana Trench," accessed at <http://www.deepseachallenge.com/the-expedition/mariana-trench/>.

1059 "The Mariana Trench."

1060 NOAA Fisheries, "Mariana Trench Marine National Monument," accessed at <https://www.fisheries.noaa.gov/pacific-islands/habitat-conservation/marianas-trench-marine-national-monument>.

1061 Becky Oskin, "Mariana Trench: The Deepest Depths," December 6, 2017, accessed at <https://www.livescience.com/23387-mariana-trench.html>.

These statistics about the known, measured depth highlight the significance of this location as the deepest place on Earth. The Challenger Deep is also surrounded by debate, as the topic of how much of the Mariana Trench lies within the EEZ generated by Guam has been contested over time, perhaps indicative of some of the limits of creating political borders in oceans.

In Guam, the Challenger Deep has long been considered to be situated in the EEZ generated by Guam. Both topographically and textually, a US Geological Survey in 2005 concluded that it falls within Guam's maritime boundary.¹⁰⁶² Yet, in 2014, when the "Treaty Between the Government of the Federated States of Micronesia and the Government of the United States of America on the Delimitation of a Maritime Boundary" was signed, it redefined the boundary delimitation between Guam and the FSM in a way that called into question whether Challenger Deep fell within the EEZ generated by Guam.¹⁰⁶³ This treaty itself is complicated due to the current US foreign affairs rights over the Freely Associated States (FAS). In this case, it is a situation of the US entering into a treaty with the FSM whereby their bilateral agreement asserts control over the ocean resources of Guam (as a NSGT). Given the political status situations of the parties involved, the US-FSM treaty example also reflects unilateral federal action on the part of the US government, which lacked meaningful consultation with the people of Guam prior to executing a treaty that divests the island of significant natural resources.¹⁰⁶⁴ Understanding the maritime boundaries that situate Challenger Deep within the Pacific is important, as it may determine who holds the rights to the resources that lie there.

The boundaries are relevant as "Challenger Deep may well contain mineral resources of inestimable value, which a future self-governing Guam may wish to exploit."¹⁰⁶⁵ The US entered into a bilateral treaty agreement without providing a mechanism for consultation of the people of Guam "prior to executing a treaty that potentially divests them of no insignificant part of their natural resources inventory."¹⁰⁶⁶ Due to Guam's political status as a NSGT, the US has an obligation, under international law, to consult Guam on matters impacting development on issues that affect the island's natural resources.¹⁰⁶⁷ As a result of the absence of prior consultation with Guam, the US-FSM treaty could be considered null and void if Guam were to exercise sovereignty under the political status option of independence (and possibly free association). Because the natural extent of the trench extends between the FSM's EEZ as well as the EEZs generated by both the CNMI and Guam, the monument is within the latter two EEZs. Because of the immense size of the trench, as well as overlapping political boundaries with the FSM, it is definitely an

1062 James R. Hein, Brandie R. McIntyre, and David Z. Piper, "Marine Mineral Resources Of Pacific Islands—A Review Of The Exclusive Economic Zones Of Islands Of US Affiliation, Excluding The State Of Hawaii," US. Department of the Interior, US Geological Survey, 2005, accessed at <https://pubs.usgs.gov/circ/2005/1286/>.

1063 Judith T. Won Pat, "Re: Analysis of the US-FSM Maritime Boundary Agreement," October 8, 2014, Office of the Speaker, 32nd Guam Legislature.

1064 Michael Lujan Bevacqua and Victoria Lola Leon Guerrero, "New Perspectives on Chamorro Self-Determination," *Micronesian Educator* 22 (2015) vi. Accessed at https://www.uog.edu/_resources/files/schools-and-colleges/school-of-education/micronesian-educator/Micronesian_Educator_Vol_22_Special_Edition.pdf.

1065 Attorney Julian Aguon to Honorable Judith T. Won Pat, "Memorandum on Analysis of US-FSM Maritime Boundary Agreement," letter, September 27, 2014, 6.

1066 Won Pat, "Re: Analysis of the US-FSM Maritime Boundary Agreement."

1067 Louella Losinio, "Guam's natural resources 'Usurped' again by unilateral federal action," *Marianas Variety News*, October 16, 2014, accessed http://overseasreview.blogspot.com/2014_10_16_archive.html.

area of potential and concern.

Ultimately, the situation with Challenger Deep reflects the limitations of the status quo for Guam's political status.

In a 2005 US Geological Survey (USGS) report, the extensive ocean resources for the EEZ generated by Guam were found to include mineral deposits within the environment represent near- to long-term potential mineral resources that likely include:

- Cobalt-rich iron-manganese crusts on Cretaceous seamounts
- Iron-manganese nodules on abyssal plains
- Phosphorite deposits on Cretaceous seamounts
- Epithermal gold deposits on the active volcanic arc
- Hydrothermal manganese- and iron-oxide deposits on the active arc and back-arc
- Hydrothermal polymetallic sulfide/sulfate deposits on the active arc and back-arc
- Sand and gravel (aggregate) in nearshore environments
- Precious coral on the flanks of Guam and flanks and summit of seamounts.¹⁰⁶⁸

This list indicates that Guam's surrounding waters have an indeterminate amount of possibly valuable mineral deposits and other marine resources.¹⁰⁶⁹ The existence of hydrothermal vents and other geological features in the area also implies the possibility of future endeavors of seabed mining, which is building a global economic interest.¹⁰⁷⁰ Unsurprisingly, many PICs are exploring the potential mineral resources within their EEZs.

Deep-sea mining of the oceans for rare earth elements and metals is understood to be useful for clean energy futures, since renewable energy technology requires rare earth minerals. Yet, this situation may pose a trade-off of deep-sea mining for resources necessary to fulfill a transition to renewable energy. As the Blue Ocean Law 2016 report argues, in the Pacific there is also a risk of "creating a deep-sea miners 'rush' as DSM operators flock to the region and push to gain licenses in order secure competitive advantages before any protective legal and regulatory frameworks have been implemented."¹⁰⁷¹ Countries and major corporations may look to mine the "mineral-rich deposits in hydrothermal vents in the deep seas and on the ocean floor."¹⁰⁷²

While the exact value of these deep-sea deposits is impossible to calculate with certainty, a leading UN official has recently described the scale of these resources as "staggering" with 'several hundred years'

1068 Hein, et al., "Marine Mineral Resources Of Pacific Islands."

1069 US Department of the Navy, Mariana Islands Range Complex Environmental Impact Statement/Overseas Environmental Impact Statement," 3.1-9, 3.6-11.

1070 Santillo, et al., "An Overview of Seabed Mining," 4.

1071 Blue Ocean Law, "An Assessment of the SPC Regional Legislative and Regulatory Framework (RLRF) for Deep Sea Minerals Exploration and Exploitation," March 17, 2016, 17, accessed at <https://ramumine.files.wordpress.com/2016/03/an-assessment-of-the-spc-regional-legislative-and-regulatory-framework-rlrf-for-deep-sea-minerals-exploration-and-exploitation-final-report.pdf>.

1072 Aguon to Honorable Judith T. Won Pat, "Memorandum on Analysis of US-FSM Maritime Boundary Agreement," 6.

worth' of, among others, gold, silver, cobalt, nickel, and other rare-earth minerals.¹⁰⁷³ Political status is crucial to shaping how these resources will or will not be exploited.

Mariana Trench Marine National Monument

On January 6, 2009, US President George W. Bush designated various parts of the Mariana Trench to create the Mariana Trench Marine National Monument. The monument encompasses 204,530 square kilometers, with 49,336 square kilometers within Guam's marine area.¹⁰⁷⁴ The establishment of the monument also created a protected marine reserve for the approximately 195,000 square miles (506,000 square km) of seafloor and waters surrounding the islands. This reserve includes "most of the Mariana Trench, twenty-one underwater volcanoes and areas around three islands."¹⁰⁷⁵

The monument is considered part of a large marine protected area (LMPAs), defined as "marine protected areas (MPAs) that are greater than 100,000 km²"¹⁰⁷⁶ LMPAs are "sections of the ocean set aside where human activities such as fishing are restricted" and have emerged as a prominent trend in marine conservation.¹⁰⁷⁷ In particular, LMPAs are considered to help meet global targets for ocean protection. Because only "3.4% of the world's oceans are designated as protected,"¹⁰⁷⁸ and the efforts to protect marine biodiversity cannot be achieved without careful consideration of management and design beyond just targeting one area alone.¹⁰⁷⁹

These monuments are supposed to protect and conserve ocean ecosystems.¹⁰⁸⁰ Additionally, when it comes to governance over LMPAs, the tendency is to establish an LMPA through top-down processes, such as the executive order that created the Mariana Trench Marine National Monument. Unfortunately, that means that there is little room for informed consent or even public awareness of the process, format, and general ownership considerations of the LMPA. Indeed, scholars have found there is "little empirical research thus far" that seeks to assess public awareness and perceptions of the process through which a specific LMPA has been formed.¹⁰⁸¹

For Guam, the establishment of the monument did not include an opportunity to assess attitudes about

1073 BBC News, "UK Seabed Resources joins deep-ocean mineral-mining rush," *BBC News*, April 27, 2014, accessed at <https://ramumine.wordpress.com/2014/04/27/uk-seabed-resources-joins-deep-ocean-mineral-mining-rush-2/>.

1074 Marine Conservation Institute, "Mariana Trench," accessed at <https://mpatlas.org/zones/8783/>.

1075 Oskin, "Mariana Trench."

1076 Leenhardt, P., B. Cazalet, B. Salvat, J. Claudet, and F. Feral, "The rise of large-scale marine protected areas: Conservation or geopolitics?" *Ocean & Coastal Management* 85 (2013):112–118.

1077 Laurie Richmond and Dawn Kotowicz, "Equity and access in marine protected areas: The history and future of 'traditional indigenous fishing' in the Mariana Trench Marine National Monument," *Applied Geography* 59 (May 2015): 117–124, accessed at <https://doi.org/10.1016/j.apgeog.2014.11.007>; Dawn M. Kotowicz, Laurie Richmond, & Justin Hospital, "Exploring Public Knowledge, Attitudes, and Perceptions of the Mariana Trench Marine National Monument," *Coastal Management*, 45, 6 (2017): 452–469.

1078 G. J. Edgar, R. D. Stuart-Smith, T. J. Willis, S. Kininmonth, S. C. Baker, S. Banks, N. S. Barrett, et al. "Global conservation outcomes depend on marine protected areas with five key features." *Nature* 506 (2014): 216–220.

1079 Kotowicz, et al., "Exploring Public Knowledge of the Mariana Trench." ; D. Juffe-Bignoli, N. D. Burgess, H. Bingham, E. M. S. Belle, M. G. de Lima, M. Deguignet, B. Bertzky, et al., *Protected planet report 2014*. (Cambridge, UK: UNEP-WCMC, 2014).

1080 Kotowicz, et al., "Exploring Public Knowledge of the Mariana Trench." ; Juffe-Bignoli, et al., "Protected planet report."

1081 Kotowicz, et al., "Exploring Public Knowledge of the Mariana Trench."

the LMPA or the types of activities that should be permitted or restricted therein. The top-down approach is also reflected in the way the monument is governed, where the natural resources are being regulated by US federal entities: “NOAA Fisheries and the US Fish and Wildlife Service are working with the CNMI Government, Department of Defense, Department of State, US Coast Guard, and others to develop a monument management plan and are collaborating for the long-term protection of the Marianas.”¹⁰⁸² With the US functioning as the primary actor in domestic and foreign affairs under the current status, the decisions these agencies make with regard to the monument will have an effect on its people, way of life, and economic opportunities and growth.

Coral Reefs

Guam’s coral reefs are a part of the ocean resources that maintain well-being of the marine environment and contribute to the island in a variety of ways. Guam is “largely surrounded by a fringing reef, but at the southern tip of Guam, a barrier reef and Cocos Island enclose Cocos Lagoon.”¹⁰⁸³ Coral reefs have extensive environmental significance, and also present opportunities to support the island’s economy.

On November 25, 2020, the US National Oceanic and Atmospheric Administration (NOAA) announced a proposed Pacific rule to protect 230 square miles of marine habitat around American Samoa, Guam, the Northern Mariana Islands, and Pacific remote islands.¹⁰⁸⁴ Specifically, the US National Marine Fisheries Service (NMFS) proposed this rule that stands to designate a critical habitat for marine waters in Guam, and the NMFS subsequently informed the island’s Coastal Management Program of this proposal.¹⁰⁸⁵ The US government agency’s unilateral proposal to declare coral reefs around Guam a critical habitat highlights some of the limitations for the island under the current status. In this case, the people of Guam did not experience prior or informed consent about the proposal, nor have public hearings been held on the island.

The proposal of a coral critical habitat includes protections for Pacific reef coral species that have been listed under the Endangered Species Act (ESA).¹⁰⁸⁶ According to the NMFS proposal, three of these corals occur in Guam (*Acropora globiceps*, *Acropora retusa*, and *Seriatopora aculeata*).¹⁰⁸⁷ However, according to Guam’s Bureau of Statistics & Plans (BSP) the presence of these three coral species in Guam is in question

1082 National Oceanic and Atmospheric Administration, “Mariana Trench Marine National Monument.”

1083 Hein, et al., “Marine Mineral Resources Of Pacific Islands,” 19.

1084 Center for Biological Diversity, “Feds Propose More than 6,000 Square Miles of Coral Habitat Protections in Florida, Caribbean, Pacific. Lawsuit Prompted Rule that Recognizes Climate Change Threats,” November 25, 2020, accessed at <https://biologicaldiversity.org/w/news/press-releases/>.

1085 US Department of Commerce, National Oceanic & Atmospheric Administration, National Marine Fisheries Service. “Letter to Mr. Tyrone Taitano, Director, Guam Coastal Management Program,” November 27, 2020, accessed at <https://bsp.guam.gov/wp-bsp-content/uploads/2021/02/PIR-Proposed-Coral-CH-CZMA-letter-Guam-11-27-20.pdf>.

1086 National Oceanic and Atmospheric Administration Fisheries, “Proposed Rule to Designate a Critical Habitat for the Threatened Indo-Pacific Corals,” November 27, 2020, accessed at <https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-indo-pacific-corals>.

1087 National Marine Fisheries Service, Pacific Islands Regional Office, “Endangered Species Act Critical Habitat Information Report: Basis and Impact Considerations of Critical Habitat Designations for Threatened Indo-Pacific Corals,” October 2019, 12, accessed at <https://bsp.guam.gov/wp-bsp-content/uploads/2021/02/PIR-Info-Rpt-9-25-20-inc-508.pdf>.

as the NMFS proposal cites personal communications as its primary and sole sources that were used to determine if the listed corals are located in Guam’s waters. Furthermore, the BSP review of the proposal cites its coordination with the Guam Department of Agriculture (DoAg), whose review notes that the US:

federal agency has not conducted any recent mapping or surveying to determine if the identified coral species exist or where colonies may be located. DoAg has further stated that it is necessary to test the DNA of coral to differentiate among the nearly 400 species present in Guam’s waters and that such tests have not been conducted. DoAg indicated that its federally funded coral monitoring project informed NOAA several years ago that it is not clear that two of the three species indicated exist in Guam as reporting biologists had seen two colonies in the last sixteen years but are no longer able to locate the two colonies. DoAg proposes that the presence of the three species should be confirmed with new, quantitative surveys before any critical habitat is designated.¹⁰⁸⁸

This part of the review highlights concerns about insufficient scientific evidence to confirm the presence of these coral resources in Guam.

Critical habitat designation would establish a requirement of consultation for federal government activities whereby federal agencies consider the effects of any action they permit, fund, or carry out and “to ensure those actions are not likely to destroy or adversely modify the value of the critical habitat for the conservation of the listed corals.”¹⁰⁸⁹ Additionally, critical habitat designations have benefits of “improving water quality throughout the coastal zone, limits on overfishing, protections for spawning grounds, reduced impacts from development and dredging, and reduced human pressure on hundreds of thousands of reef-associated species.”¹⁰⁹⁰ While there are potential benefits to critical habitat designation, this proposal comes from the US federal government and is an example of how Guam’s current political status can be an impediment to the island’s sovereign control over its own natural and ocean resources, like coral reefs.

The proposal addresses consultation for US federal activities that will occur in the coral critical habitat area, yet it removes the US military and exempts DOD from these requirements for its activities. Specifically, the NMFS proposes “to exclude” the US “Navy’s Ritidian Point Surface Danger Zone complex” site from consideration for coral critical habitat designation and states:

For the Navy’s Ritidian Point Surface Danger Zone complex, we conclude that the impacts to national security of including this area within critical habitat outweigh the conservation benefits of designation...

1088 Bureau of Statistics & Plans, “Letter to Michael D. Tosatto, Re: Coastal Zone Management Act (CZMA) Federal Consistency Review for National Marine Fisheries Service’s proposed Critical Habitat for the Threatened Indo-Pacific Corals (Docket No. 200918-0249) (GCMP FC 2021-0003),” March 26, 2021, 3.

1089 National Oceanic and Atmospheric Administration, “Proposed Critical Habitat in American Samoa, Guam, CNMI, & PRIA for 7 Reef Corals Listed Under the Endangered Species Act,” December 2020, <https://media.fisheries.noaa.gov/2020-12/general-information-on-proposed-coral-critical-habitat-12-23-2020.pdf?null=>.

1090 Center for Biological Diversity, “Feds Propose More than 6,000 Square Miles of Coral Habitat.”

The most important factors supporting this exclusion are that this area is a unique and important place for DoD activities, and the consultation requirements for critical habitat would place new demands on DoD both in terms of the consultation process as well as potential modifications to the DoD activities...

...the exclusion of this area means DoD will not be required to consult to insure that its activities are not likely to adversely modify habitat or essential features within this area.¹⁰⁹¹

These excerpts signal that the US federal agency is asserting its national security priorities at the expense of conservation and protection of Guam's corals. This example illustrates another way that the island is precluded, by virtue of its current political status as an unincorporated territory, from conserving and protecting its own ocean resources from the environmental impacts of US military activities. Doubtless, coral conservation and protecting threatened corals is important. However, this proposed rule and its exclusion of US military areas from the critical habitat designations reflect the inconsistent (and contradictory) manner in which environmental matters are managed by the US government under Guam's current political status.

In its review of the proposed rule's exclusion of the Surface Danger Zones off of Ritidian Point, the Guam Waterworks Authority (GWA) indicates that a map

provided as Figure 5 of paragraph (f) in the proposed Rule does not accurately reflect all of the proposed exclusions to the critical habitat. In fact, the map contradicts the exclusion of non-DoD areas. GWA has stated that updated detailed maps that clearly indicate the location of essential features within the critical habitat are requested. The maps provided show that critical habitat surrounds most of the entire island.¹⁰⁹²

This comment supports the overall concern that the latest and highest quality scientific evidence was not used in delineating the proposed critical habitat boundary for Guam. Furthermore, the distinct situation of Guam's territorial status requires consideration of how the US federal government currently exercises control over the island's natural resources on land and in ocean waters. The BSP and Guam Coastal Management Program indicates in its review of the NMFS proposal that:

Understanding that NMFS has an obligation to ensure the continued existence of the species, DoAg submits that a critical habitat designation is not the best way to safeguard against the extinction of these coral species. The proposed rule notes that "only" activities that are federally authorized, funded, or carried out will be impacted by the designation. On Guam, the percentage

1091 National Oceanic and Atmospheric Administration, "Endangered and Threatened Species; Critical Habitat for the Threatened Indo-Pac Corals," *Federal Register* 85, no. 229, November 27, 2020, accessed at <https://www.federalregister.gov/documents/2020/11/27/2020-21226/endangered-and-threatened-species-critical-habitat-for-the-threatened-and-indo-pacific-corals>.

1092 Bureau of Statistics & Plans, "Letter to Michael D. Tosatto," 5.

of activities funded, authorized or carried out by the federal government is substantially higher than most states. The federal government controls almost a third of the terrestrial land mass and a large portion of the nearshore waters.¹⁰⁹³

This finding reiterates how a significant portion of Guam’s natural resources are currently held in control by the US federal government, even though the US, as administering power, should not exercise its sovereign authority over the island’s environmental resources. Importantly, the manner in which the US is exerting its control should be subject to scrutiny, given Guam’s NSGT classification as recognized by the United Nations. Furthermore, the current political status highlights significant impediments to Guam’s capacity for natural resource development and promoting well-being through the protection of threatened species.

Another concern relates to the impact that NOAA’s proposal and consultation requirements pose for the island’s residents and the economy:

The impact on these smaller parcels could be tremendous in terms of time and cost, and NOAA’s economic analysis does not appear to consider the way that its cost estimates would unfairly target small local landowners. This situation is already playing out with the presence of threatened and endangered snail species on small land holdings, and we can presume a critical habitat designation associated with nearshore waters would only increase cost and time associated with any development over an acre. Large projects, including federal funded actions or military activities, may be able to handle the added cost and time, but smaller projects might well be forced to delay or cancel activities because of the increased burden. Given the state of the economy during the pandemic, this burden seems especially cruel and ill-timed.¹⁰⁹⁴

Precious coral “is found at shallow to intermediate water depths at many places around Guam. Surveys for black and red/pink coral were carried out in 1975, but no commercial grade deposits were indicated on the basis of the few samples collected” from that time.¹⁰⁹⁵ By the publication of this study, surveys had not yet been performed in Guam’s deeper water areas (>400 m) or seamounts east of the Mariana Trench, although both areas were determined to have promising targets.¹⁰⁹⁶ Given the immediate economic market of precious coral, regulations have been established to address potential exploitation of the resource.

A 2007 report, “The Economic Value of Guam’s Coral Reefs,” evaluated five main uses of coral reefs to estimate a value: “(1) extractive uses (e.g. fisheries) (2) non-extractive (e.g. recreation/tourism), (3)

1093 Bureau of Statistics & Plans, “Letter to Michael D. Tosatto,” 6.

1094 Bureau of Statistics & Plans, “Letter to Michael D. Tosatto,” 6-7.

1095 Hein, et al., “Marine Mineral Resources Of Pacific Islands,” 19.

1096 Hein, et al., “Marine Mineral Resources Of Pacific Islands,” 19.

cultural/traditional uses, (4) education and research, (5) shoreline and infrastructure protection.”¹⁰⁹⁷ The findings of this research concluded that the value of associated goods and services from Guam’s coral reefs nets an aggregated economic value of \$127 million. This estimated total value comes from: seventy-four percent for tourist industry use, eight percent amenity use, seven percent coastal protection, and seven percent watersports segments.” Given that there was little-to-no development of extractive industries such as fisheries at the time of the report, this use was not a significant portion of the calculation. Ultimately, as a natural and ocean resource, coral reefs represent a key area of resource management, use, and protection. Reefs also may fulfill a primary function in the island’s development and economy focused on sustainability.

Coral reefs are unique and important resources, but without proper management and protection there is a threat of ruining these resources. Destruction of coral reefs can come in the form of overfishing, coastal pollution, habitat destruction, ocean warming, and ocean acidification.¹⁰⁹⁸ As other sections of this report detail, the threats of climate change and other factors of human security can put the ocean resources at risk. Additional threats to the ocean environment come from current US military activities and operations that are being conducted in Guam’s territorial waters. With these effects on the ocean, it will be hard to collect, use, and sustain the amount of ocean resources that Guam may have access to.

Under the current status, development and population increases have had an impact on Guam’s reefs and nearshore natural resources.¹⁰⁹⁹ Guam’s geography positions it as an island with plenty of possibilities for development of its natural and ocean resources, though the question of governance and jurisdiction over these resources continues to be complicated by the territorial status. Indeed, there are tradeoffs between various types of development possibilities and natural resource sustainability. The issue of sustainable development of natural resources is, in many ways a neutral consideration given that under any political status there would be decisions that Guam would need to make regarding future development options.¹¹⁰⁰ Thus, the different political status options of statehood, independence, and free association for Guam will need to consider these issues for the island’s governance of natural resources and ocean resources.

Statehood

As a state, there may be changes regarding the control, exploitation and preservation of natural and

1097 Pieter van Beukering, Wolfgang Haider, Margo Longland, Herman Cesar, Joel Sablan, Sonia Shjegstad, Ben Beardmore, Yi Liu, and Grace Omega Garces, “The economic value of Guam’s coral reefs,” University of Guam Marine Laboratory Technical Report No. 16, March 2007, accessed at https://www.researchgate.net/profile/Ben_Beardmore/publication/258438780_The_economic_value_of_Guam's_coral_reefs/links/00b7d5283ac7d903af000000.pdf.

1098 Greg Stone, “The Five Biggest Threats to Our Oceans,” June 5, 2014, accessed at https://www.huffpost.com/entry/the-five-biggest-threats-_b_5453534.

1099 Nancy G. Prouty, et al., “Historic Impact of Watershed Change and Sedimentation to Reefs Along West-Central Guam,” *Coral Reefs* 33 (2014): 733-749, DOI 10.1007/s00338-014-1166-x ; Jamey E. Redding, et al., “Link between sewage-derived nitrogen pollution and coral disease severity in Guam,” *Marine Pollution Bulletin*, 73, no. 1 (2013): 57-63, <https://doi.org/10.1016/j.marpolbul.2013.06.002> ; Shanna Grafeld, et al., “Divers’ willingness to pay for improved coral reef conditions in Guam: An untapped source of funding for management and conservation?,” *Ecological Economics* 128 (2016): 202-213, accessed at <https://doi.org/10.1016/j.ecolecon.2016.05.005>.

1100 Of course, statehood as a political status may entail the prescription or negation of particular development options for Guam per state vis-à-vis national government.

ocean resources for Guam. One of the main concerns the island will need to consider is ownership of the land. As a territory, Guam has a claim to protect the EEZ the island generates from natural resource exploitation. As a state of the US, any residual claims of land ownership and natural resource jurisdiction would be expunged.

Although speculative, increased political power and voting representation with statehood could influence Guam's efforts to govern its natural resources. Representation for Guam in the US Congress would mean voting rights within the legislative branch of the federal government, which may be able to translate into changes to land management for Guam at the national and new "state" local level. Indeed, leveraging state power can have specific local effects vis-à-vis the US military, a case in point is the example of Hawai'i.

Natural resources, in general, belong to the state or the federal government unless found on private property or the rights to them have been obtained from the government. States retain primary authority over natural resources within their borders, although federal statutes also apply to many resources, especially those found on federal land.¹¹⁰¹ Thus, if Guam were to adopt statehood, governance over the island's natural resources would be considered to be primarily located within Guam's physical boundaries. Guam must consider its land mass and the current amount of land used by the US federal government to address the impact that statehood would have on the island's natural resource management.

In 1960, Congress enacted the Sikes Act (16 USC. 670a- 670o), which mandated a level of accountability that natural resources are properly maintained and cared for by states. Under statehood, Guam would be responsible for adhering to the statutes established by the Sikes Act. Even with the statehood option, the issue of DOD controlled/military-held lands are important to consider. Regarding Guam's arable land, or land usable for other development purposes that extend into DOD-held property, national security may take precedence over the island's ability to develop the land for economic and sustainability use.

Another issue to consider with the statehood option is what is referred to as split estate, "the party that owns the land's surface has surface rights, while the party that owns the natural resources in the ground has subsurface rights."¹¹⁰² For oil, gas, coal and other minerals, it is most likely that the federal government holds the subsurface rights while another party could hold the surface rights.¹¹⁰³ These rights would be considered if Guam is a state and would be key for any development of natural or ocean resources that are below the surface and capable of being mined. While this scenario of a split estate might not be possible at this point, it is an aspect of land and ocean resource ownership that Guam may be subject to under the statehood option.

Regarding the EEZ, territorial status means Guam has legal claims to rights to explore and use natural and marine resources, and to protect the EEZ it generates from natural resource exploitation, even as the US appears not to recognize such claims. If Guam were a state, the island would have no ownership or primary governance over the EEZ. As with other US coastal states, such as Florida and California,

1101 Environmental Law Institute, "Natural Resources," accessed at <https://www.eli.org/keywords/natural-resources>.

1102 US Department of Interior, "Natural Resources Revenue Data: Ownership," accessed at <https://revenuedata.doi.gov/how-it-works/ownership/#natural-resource-ownership>.

1103 US Department of Interior, "Natural Resources Revenue Data."

those states hold “authority and natural resource ownership in the three-mile area extending outward from their coasts.”¹¹⁰⁴

Thus, the US federal government would hold jurisdiction over the rest of the two-hundred-nautical miles that make up the EEZ generated by Guam. While Guam may possibly lose ownership over some parts of land and its surrounding waters, the tradeoff may be more access to other resources and funding from the US federal government. As a state, Guam could take additional measures to invest in the environment and other state-level initiatives to benefit land preservation and sustainability. Along with defining boundaries on land and in the water, there is also Guam’s approach to governance of ocean resources and the environment to consider.

Independence

As an independent country, Guam will have the authority and responsibility over decisions regarding its environment and it could control its governance over natural and ocean resources. Guam would be able to enter into treaties and partnerships and utilize international and regional partnerships. These opportunities may aid Guam with funding and research in relation to its natural resources. Under its current status, Guam does not have meaningful options or full access to direct assistance from the international community because Guam is precluded from becoming a member of international organizations which only recognize independent, sovereign countries. While there is the possibility of outside pressure from the international community, Guam’s approach under independence will be led by what its people want for the use and conservation of natural and ocean resources. In this section, Singapore will be used as an example of how an independent country has developed with regard to governance over its natural resources.

As an independent country, Guam would have jurisdiction over the EEZ the island generates and would need to consider protecting its natural and ocean resources. The island will also have to address threats to its maritime borders and other problems that may impact the land. For example, Guam would need to address issues such as illegal fishing, smuggling, and illegal dumping of waste within its waters and on land. The security of ocean resources would also be under the purview of Guam, and it would need to decide how to secure its EEZ and to ensure compliance with international law. Although Guam will control its EEZ under independence, enforcing its EEZ is another matter entirely, and can pose a security risk to the country of Guam. The Republic of Palau can be instructive in this regard. Palau has created national divisions, such as the Palau Division of Marine Law Enforcement, and implemented policies like satellite tracking that help address issues such as illegal fishing within the country’s EEZ. Even with limited marine enforcement vessels at its disposal, Palau’s political status facilitates its efforts to ensure Pacific fish stocks within their EEZ remain viable sources of nutrition and revenue for generations to come. As an independent country, Guam could develop a clear and capable plan of action and procure adequate resources to protect its EEZ and manage the natural resources within.

1104 US Department of Interior, “Natural Resources Revenue Data.”

Essentially, security for Guam’s maritime borders would require stern consideration of law enforcement at sea. Policing the EEZ is a resource-intensive effort that many governments simply cannot afford. Governments that have law enforcement institutions with adequate capacity not only protect their maritime borders and fisheries, but also gain a source of revenue from imposing fines on violators.¹¹⁰⁵ Though Guam does not have a large commercial fisheries industry, it will need to consider its policies and potential international partnerships that can assist in securing the waters surrounding Guam. If Guam fails to do this, maritime security threats may run rampant, opening Guam up to being exploited by others. Other avenues, such as treaties with other countries, may be taken into consideration for issues such as security of ocean resources and the EEZ. With regard to the development of ocean resources, such as deep-sea exploration and mining, Guam would be able to choose to pursue these options in accordance with customary international law regulations (ex: UNCLOS) and existing regulatory frameworks.

As an independent country, Guam would also be able to make decisions about its defense. Guam’s orientation to the protection of its natural and ocean resources needs to include the ability to be able to protect these environmental resources and to invest in sustainable options for defending against climate change and other issues that may threaten the livelihood and health of the island’s people.

Status Example: Singapore

On August 5, 1965, Singapore separated from Malaysia to become an independent country.¹¹⁰⁶ It is made up of Singapore Island and over sixty smaller islands. The population is an estimated 5.7 million people, and is projected to grow to 6.5-6.9 million people by 2030.¹¹⁰⁷ According to a 2013 government White Paper on population issues, the key considerations for Singapore’s population policies are focused on expanding sustainable development to improve the national economy and to maintain a high-quality living environment.¹¹⁰⁸ As an independent country, Singapore exercises sovereignty over its natural resources, with a deep focus on conservation and green initiatives that contribute to its sustainable development.

Singapore has few natural resources, with no natural forests on the island, and only a tiny fraction of its land area is classified as agricultural. Conventional farming accounts for only one percent of Singapore’s land use. Thus, the agricultural production that does occur comprises a negligible contribution to the overall economy. In 2012, only seven percent of the country’s food was grown locally.¹¹⁰⁹ Agricultural production primarily consists of intensive cultivation of fruits, vegetables, and poultry raised for local consumption.¹¹¹⁰

1105 Paul Shemella, *Global Responses to Maritime Violence: Cooperation and Collective Action* (Stanford, CA: Stanford University Press, 2016), 93.

1106 C.M. Turnbull. *A History of Modern Singapore, 1819–2005*. (Singapore: National University of Singapore Press, 2009), 289–291.

1107 Singapore Department of Statistics, National Population and Talent Division, “Population in Brief 2020,” September 2020, accessed at <https://www.strategygroup.gov.sg/media-centre/population-white-paper-a-sustainable-population-for-a-dynamic-singapore>.

1108 “A Sustainable Population for a Dynamic Singapore: Population White Paper,” January 9, 2013, accessed at <https://www.strategygroup.gov.sg/media-centre/population-white-paper-a-sustainable-population-for-a-dynamic-singapore>.

1109 Kalinga Seneviratne, “Farming in the Sky in Singapore,” *Our World*, December 12, 2012, accessed at <https://ourworld.unu.edu/en/farming-in-the-sky-in-singapore>.

1110 Kennard, Annajane, “Singapore,” *Encyclopaedia Britannica*, April 17, 2021, accessed at <https://www.britannica.com/place/Singapore>.

In 2021, Goh Wee Hou, the director of the Food Supply Strategies Department at the Singapore Food Agency (SFA) stated, “local food production currently accounts for less than ten percent of our nutritional needs.”¹¹¹¹ To address the current issue of ninety percent of Singapore’s food coming from abroad, in 2019 the country announced its “30 by 30” goal of producing thirty percent of its own food by 2030.¹¹¹² This ambitious target considers available land for agri-food production and places emphasis on citizens to grow wherever they can. Since 2017, the government has leased land in two districts for large-scale commercial farm projects. In addition to these farms, the government is implementing measures for growing food in urban spaces, such as parking structure roofs, office buildings, and schoolyards, etc.

As an independent country, Singapore’s government is providing grants to those who can use technology and innovation to support greater agricultural yield amounts. In March 2021, the Singapore Food Agency announced it was establishing a \$60 million-dollar Agri-Food Cluster Transformation Act (ACT) Fund to assist applicants with start-up costs catering to large-scale commercial farms and the growth of agritech businesses.¹¹¹³ This government fund combines with the “30 by 30” plan to help the country optimize farms and produce maximum agricultural capacity at the local level in spite of having limited land resources. Like Guam, Singapore lacks an abundance of economically valuable natural resources within its land boundaries. Yet, Singapore demonstrates innovative policies and development, without predominant reliance on land use from its agricultural sector, due to its minimal available arable lands. Comparable to Guam, Singapore has also had to import food to sustain its population. As this case shows, the political status option of independence has provided Singapore with the sovereign rights and access to innovative solutions to address its food insecurities and to develop high-tech solutions that consider overreliance upon external and unsustainable food sources.

These efforts at the national level have also contributed to building a strong economy that works to protect Singapore’s ocean resources of its fish stocks.¹¹¹⁴ Similar to current efforts at promoting local agriculture production, the Singapore government focused on developing its aquaculture industry. Since 2003, the country, to better understand aquaculture options, has funded extensive research on hatchery technologies, marker-assisted and genomic selection.¹¹¹⁵ Foodfish production is an important element for food security in Singapore, with major local foodfish production coming from “marine aquaculture in floating net cages along the northern coast.”¹¹¹⁶ The local fishing industry supplies only a portion of the total fresh fish requirement; most of the catch comes from offshore fishing vessels. There also is a small

1111 Clarisa Diaz, “3 Ways Singapore’s Urban Farms are Improving Food Security,” *World Economic Forum*, April 7, 2021, accessed at <https://www.weforum.org/agenda/2021/04/singapore-urban-farms-food-security-2030>.

1112 AlphaBeta, “What Singapore’s ‘30 by 30’ Food Security Goal Means for Businesses,” January 2020, https://alphabeta.com/wp-content/uploads/2020/02/what-singapores-30-by-30-food-security-goal-means-for-businesses_jan2020.pdf.

1113 Singapore Food Agency, “Media Release: New \$60 Million fund to support transformation and growth of local agri-food sector,” March 4, 2021, accessed at <https://www.sfa.gov.sg/docs/default-source/default-document-library/sfa-media-release---new-60-million-fund-to-support-transformation-and-growth-of-local-agri-food-sector.pdf>.

1114 Benjamin Elisha Sawe, “What Are the Major Natural Resources of Singapore?” *WorldAtlas*, accessed at <https://www.worldatlas.com/articles/what-are-the-major-natural-resources-of-singapore.html>.

1115 Yubang Shen, Keyi Ma, and Gen Hua Yea, “Status, challenges, and trends of aquaculture in Singapore,” *Aquaculture* 533 (2021): accessed at <https://doi.org/10.1016/j.aquaculture.2020.736210>.

1116 Shen, et al., “Status, challenges, and trends of aquaculture in Singapore.”

aquaculture industry that raises groupers, sea bass, and prawns.¹¹¹⁷

The Singapore government has provided strong support for aquaculture in coastal waters, “more and more farms are now upgrading their culture systems and enlarging their productivity by adopting and using novel cage culture systems.”¹¹¹⁸ Cage culture and containment aquaculture systems in the sea highlight how the political status of independence provides possibilities for Singapore to continue developing systems of sustainable foodfish and its sovereign rights to expand technological innovations in offshore aquaculture that may address food security for the future population.¹¹¹⁹ Since the 1980s, Singapore has also remained the world’s top exporter of ornamental fish.¹¹²⁰ Given its climate, temperature and rainfall, the island is ideal for rearing tropical fish. According to a 2005 report, Singapore has established “well-developed distribution systems for ornamental fish, comprising farmers, wholesalers and exporters.”¹¹²¹ The UN Comtrade statistics released by the Agri-Food and Veterinary Authority show that Singaporean firms had exported about \$56 million worth of ornamental fish in 2013.¹¹²² In 2016, exports of ornamental fish represented 14.1% of the global market.¹¹²³ While there have been dips in the market over time, the global ornamental fish market was valued at \$6.8 billion in 2019. According to a January 2021 report, in spite of the Covid-19 pandemic impacts, this market is projected to reach \$11.3 billion by the end of 2025.¹¹²⁴

This aquarium fish industry is another example of how, as an independent country, Singapore exercises its sovereign rights for natural and ocean resource development. Under the political status option of independence for Guam, the island would also be positioned to establish and develop various market sectors related to its natural and ocean resources. Similar to Singapore in terms of climate, Guam could consider raising fish and/or developing other fishing industries to contribute to the island’s portfolio of environmental resources.

In order to foster national economic growth, Singapore has used its independent country status to account for its lack of natural resources through the government’s pursuit of development beyond the region. For example, Singapore has bypassed its often-hostile regional environment and transformed itself into a country that partners economically and wields influence in places as distant as Russia. Since the

1117 Kennard, “Singapore.”

1118 Shen, et al., “Status, challenges, and trends of aquaculture in Singapore.”

1119 Neo Chai Chin, “Fish Farms Turn to AI, Recirculating Systems to Scale Up Sustainable Aquaculture,” *Eco-Business*, February 19, 2020, accessed at <https://www.eco-business.com/news/fish-farms-turn-to-ai-recirculating-systems-to-scale-up-sustainable-aquaculture/>; *The Straits Times*, “President Witnesses First Harvest of Offshore Fish Farm,” *The Straits Times*, February 28, 2020, accessed at <https://www.straitstimes.com/singapore/president-witnesses-first-harvest-of-offshore-fish-farm>.

1120 Gen Hua Yue, et al., “Current Knowledge of the Biology and Aquaculture of the Endangered Asian Arowana,” *Reviews in Fisheries Science & Aquaculture*, 28, no. 2 (2020): 193-210, accessed at <https://doi-org.colorado.idm.oclc.org/10.1080/23308249.2019.1697641>.

1121 Ling KH & Lim LY, “The status of ornamental fish industry in Singapore,” *Singapore Journal of Primary Industries* 32. (2005): 59–69.

1122 Jessica Lim, “Top 5 Fish Exports from Singapore, the World’s Largest Exporter of Ornamental Fish,” *The Straits Times*, May 29, 2015, accessed <https://www.straitstimes.com/singapore/top-5-fish-exports-from-singapore-the-worlds-largest-exporter-of-ornamental-fish>.

1123 Sulaiman Daud, “Singapore Remains the World’s no.1 Exporter of Ornamental Fish,” *Mothership*, December 7, 2017, accessed <https://mothership.sg/2017/12/singapore-remains-the-worlds-no-1-exporter-of-ornamental-fish/>.

1124 Market Report, “Global Ornamental Fish Market By Type, By Application, By Point of Sale, By Region, Forecast & Opportunities, 2025,” accessed at https://www.reportlinker.com/p05917026/Global-Ornamental-Fish-Market-By-Type-By-Application-By-Point-of-Sale-By-Region-Forecast-Opportunities.html?utm_source=GNW.

late 2000s, the government has deliberately involved itself in Arctic affairs.¹¹²⁵ In 2012, the Singaporean government became an observer to the Arctic Council, the region's leading intergovernmental organization. "Singaporean officials also reached out to the Arctic Council's Permanent Participants, the six of which represent indigenous peoples' organizations. This can be viewed as part of the government's broader effort to jump scales in Arctic development by cooperating with non-state actors that have risen to prominent roles in Arctic governance and development."¹¹²⁶ Specifically, the Singaporean government engages with indigenous actors through three ways: visits; training; and infrastructure investment. These efforts include collaborations with indigenous peoples in Canada, Norway, Russia, and the US state of Alaska. This focus includes the Singaporean government extending invitations to Arctic indigenous peoples for funded study visits to the country.¹¹²⁷ As an independent country, Guam would be able utilize national government power to establish training programs and partnerships that could facilitate its sovereign efforts of natural resource development.

Furthermore, Singapore's maritime industry has established strong credentials in offshore engineering as well as shipbuilding and repair. This sector development provides additional opportunities for economic growth and potential in and beyond the Arctic region.¹¹²⁸ These kinds of efforts reflect opportunities under the political status option of independence, whereby a sovereign country can pursue development of natural resources beyond its region and in cooperation with other countries (and non-state actors) in order to contribute to the sustenance of its own domestic population and economic growth.

Singapore's capacity for Arctic pursuits also highlights its strategy of presenting the country as a place with a planetary perspective. In "claiming to be an Arctic stakeholder, underscoring national interests in climate change, maritime issues, and global governance" Singapore demonstrates how the independence affords options to address pressing challenges like global warming.¹¹²⁹ Given the severe impacts of climate change in the Arctic region, which will have implications for Singapore through sea-level rise, the country is preparing for the challenges and opportunities to mitigate these impacts on natural and ocean resources.¹¹³⁰ Singapore has strategically sought to position itself as a key national player in the region that is increasingly recognized as being globally important due to both climatic and economic imperatives.¹¹³¹

Free Association

Much of the discussion about independence above will apply in the case of a freely associated state of

1125 Ian Storey, "The Arctic Novice: Singapore and the High North," *Asia Policy* 18, no.1 (2014): 66-72, accessed at <https://www.jstor.org/stable/24905278>.

1126 Mia M. Bennett (2018). "Singapore: The "Global City" in a Globalizing Arctic," *Journal of Borderlands Studies*, vol. 33, no.2, pp.290, DOI: 10.1080/08865655.2017.1367708.

1127 Bennett, "Singapore: The "Global City,"" 302-305.

1128 Viji Menon, "Climate Change and Global Warming: Singapore and the Arctic," *RSIS Commentary*, no. 205, 1-3, October 16, 2019, accessed at <https://www.rsis.edu.sg/wp-content/uploads/2019/10/CO19205.pdf>.

1129 Bennett, "Singapore: The "Global City,"" 290.

1130 Menon, "Singapore and the Arctic," 1-3.

1131 Bennett, "Singapore: The "Global City,"" 306.

Guam if existing FAS models are followed. Guam will be able to establish control over natural resources and its exclusive economic zone (EEZ). As a freely associated state (FAS), Guam could develop its governance approach over natural and ocean resources to a far greater extent than it can currently as an unincorporated territory. The Republic of Palau is used as an example.

Status Example: Republic of Palau

Palau's natural resources include marine products, mineral resources, forestry-related resources, and arable land. Palau's compact with the United States addresses natural resources by emphasizing the importance of Palau's resources and maintaining the island's sovereign authority over their use and governance. Section 161 of Article VI of the Compact states:

The government of the United States and the government of Palau declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of Palau.¹¹³²

As for its control over its EEZ, Palau controls its surrounding waters. The compact addresses this in Section 462 of Article VI: "(j) Agreement Regarding the Jurisdiction and Sovereignty of the Republic of Palau over its territory and the Living and Nonliving Resources of the Sea."¹¹³³ Other sections of the compact also provide jurisdiction and sovereignty to Palau over other resource matters, as recognized under international law. Both of these conditions of the compact reflect the understanding that Palau does not work against the defense and security interest of the United States. Additionally, as a part of its governance over natural resources, Palau has created a ministry to oversee its actions.

The 2019 *State of the Environment Report*, "conveys trends of key natural resources and environment programs and analyzes their most recent conditions and grades in relation to local and global goals and standards."¹¹³⁴ This focus on global standards also aligns with the country's work to connect with international organizations that provide support for environmental development and natural resources. Specifically targeting its agricultural sector, conservation, and development, Palau worked with the following organizations: Secretariat of the Pacific Community (SPC); the Food and Agriculture Organization (FAO); US Agency for International Development (US AID); the US Forest Service; The Nature Conservancy; the Taiwanese Mission; Natural Resources Conservation Services; Global Environment Facility; and the Secretariat of the Pacific Regional Environmental Programme (SPREP).¹¹³⁵ Notably, many of these

1132 Public Law 99-658: Compact of Free Association between the United States and the Government of Palau.

1133 Public Law 99-658: Compact of Free Association between the United States and the Government of Palau.

1134 National Environmental Protection Council, "2019 State of the Environment Report Republic of Palau," May 2019, accessed at <https://palau-data.sprep.org/system/files/2019%20SOE%20Palau.pdf>.

1135 "Republic of Palau Second National Communication of the United Nations Framework Convention on Climate Change," September 2013, accessed at https://www4.unfccc.int/sites/SubmissionsStaging/NationalReports/Documents/45823961_Palau-NC2-1-Final_Palau%20National%20Communication.pdf.

organizations have been, or currently are involved, with Guam and provide resources to the island as an unincorporated territory. Several of these examples highlight how Palau's status as a FAS allows it to work with a variety of international organizations to support and protect its natural resources. As a freely associated state, Guam would have similar opportunities and would not be as strictly limited to groups such as USAID and FAO, for example.

Palau also created a Bureau of Marine Resources to oversee its ocean resources. Specifically, this bureau is responsible for divisions regarding oceanic fisheries, marine resources development, and informational and data management.¹¹³⁶ With a portion of its economy and community being supported by marine resources, Palau has taken the initiative to protect and preserve the waters surrounding its islands. In 2015, the Palau Congress passed the Palau National Marine Sanctuary Act, which established one of the world's largest marine protected areas in the Pacific Ocean. This regulation started in 2015, with a timeframe of five years, and is considered a no-take area in 2020. Within the five-year time period, "the number of licenses sold to foreign commercial vessels will be decreased annually."¹¹³⁷ As of January 1, 2020, eighty percent of its exclusive economic zone (EEZ), which spans 230,000 square miles around its islands, became part of the protected area where no extractive activities will be allowed. The remaining twenty percent of its EEZ, "will become a domestic fishing zone reserved for local fishermen and small-scale commercial fisheries with limited exports."¹¹³⁸ This example highlights how FAS status provides an opportunity for Palau to establish some regulatory frameworks for its ocean resources that also contribute to the country's economy.

Palau had to consider the protection of its waters since it might face the possibility of illegal fishing and other activities that may interfere with its natural resources. As a freely associated state, Palau implemented its own rules on illegal poaching, and in 2015 it responded to poaching issues by setting the boats of Vietnamese poachers on fire.¹¹³⁹ Palau's Division of Marine Law Enforcement was created under its Ministry of Justice in order to: provide patrol and surveillance of its waters; address illegal fishing activities; enforce national laws and international treaties between member states; conduct search and rescue missions; provide medical evacuations from the southwest islands; and assist other government agencies to southwest islands.¹¹⁴⁰

Palau has relied on its free association with the US in order to help secure the island's surrounding waters. For example, because defense issues are generally controlled by the US, Palau reportedly has only one boat to patrol its jurisdiction of 230,000 square miles. Due to the importance of protecting its surrounding waters, Palau utilized its status as an FAS and also turned toward help from other countries. For example, in 2018, Palau received training from Japan and the United States to "better crack down

1136 PalauGov News, "Ministry of Natural Resources, Environment & Tourism," *PalauGov News*, accessed at <https://www.palau.gov/pw/executive-branch/ministries/natural-resources/>.

1137 Atlas of Marine Protection, "Palau National Marine Sanctuary," accessed at <http://www.mpatlas.org/mpa/sites/68807606/>.

1138 Atlas of Marine Protection, "Palau National Marine Sanctuary."

1139 Elaine Kurtenbach. "Palau burns Vietnamese boats caught fishing illegally." *AP News*, June 12, 2015. Accessed on <https://apnews.com/3f6a26d1f5cf40a19c4996753c9d615f/palau-burns-vietnamese-boats-caught-fishing-illegally>.

1140 PalauGov News, "Division of Marine Law Enforcement," *PalauGov News*, accessed at <https://www.palau.gov/pw/executive-branch/ministries/justice/division-of-marine-law-enforcement/>.

on illegal fishing within their exclusive economic zones.”¹¹⁴¹

In early September 2020, Palau invited the US military to build a base on its land.¹¹⁴² At the time of this report, it remains to be seen what will come of Palau’s invitation. However, as research above indicates for Guam, should the military build a base, there will be particular implications for Palau’s natural resources and its relationship with other countries in the Indo-Pacific region. These examples highlight some of the elements that Guam will also have to consider: its maritime boundaries and EEZ; securing and protecting its natural and ocean resources; tourism; and a potential increase in military presence.

If Guam were to have an FAS agreement similar to Palau’s, it would be able to make environmental laws to protect its environment and use of its resources. The example of Palau illustrates how prioritizing cultural and environmental issues through policy and government funds can create sustainable opportunities for protection and conservation of resources. Guam may decide that, as a freely associated state, it would create bureaus or agencies like those discussed in the Palau model, to provide governance over particular natural or ocean resources. Alternatively, Guam could consider existing agencies that would have the capacity to address governance and adhere to domestic and international law requirements for the island’s resources.

A freely associated state has opportunities to establish relationships with other countries in the international community, thus Guam could have control over its foreign affairs. Ultimately, as this section has indicated, the FAS political status option for Guam will require the island to decide if or how it can use its natural resources and ocean resources in a sustainable way.

1141 The Japan Times, “In training program, Japan, US to help pacific island nations counter illegal fishing,” *The Japan Times*, November 18, 2018, accessed at <https://www.japantimes.co.jp/news/2018/11/11/national/training-program-japan-u-s-help-pacific-island-nations-counter-illegal-fishing/#.xfvix-gzy2x>.

1142 Bernadette Carreon & Ben Doherty, “Pacific Nation of Palau invites US to build a military base to counter China,” *The Guardian*, September 4, 2020, accessed at <https://www.theguardian.com/world/2020/sep/04/pacific-nation-of-palau-invites-us-to-build-a-military-base-to-counter-china>.

NATURAL RESOURCES AND OCEAN RESOURCES

STATUS	EFFECTS
<p style="text-align: center;"><i>Statehood</i></p>	<ul style="list-style-type: none"> • Following set regulations from US federal government for natural resources and ocean resources • Lack of jurisdiction over EEZ generated by Guam. However, Guam may get title to the submerged lands, waters, and natural resources located within three nautical miles of the coastline. • Possible loss of more land to the federal government for preservation purposes. That comes with the benefit of additional environmental protection from overexploitation of resources • More access to help for preservation, funding, and extraction in relation to natural resources and ocean resources
<p style="text-align: center;"><i>Independence</i></p>	<ul style="list-style-type: none"> • Maintain jurisdiction of EEZ • Maintain jurisdiction over lands and surrounding waters and seabed that may have natural resources • Possible overlap of Guam’s EEZ with surrounding islands which will need negotiations on an international level about where the maritime boundaries will lie for surrounding countries and Guam

	<ul style="list-style-type: none"> • Ability to receive help from international organizations in regard to natural resources and ocean resources, such as guides to preservation, and training for use and development of natural resources • The need for protection and enforcement of natural resource laws and regulations inland and within the surrounding waters to ensure maritime security of the country
<p style="text-align: center;"><i>Free Association</i></p>	<ul style="list-style-type: none"> • Maintain jurisdiction of EEZ • Security of EEZ could be aided by the United States • Ability to make its own decisions regarding natural resources, depending on terms of potential agreement between Guam and the US • May still have to work within the interests of the US when dealing internationally in regard to use of natural resources • Ability to receive aid and other assistance from international organizations in regard to natural resources and ocean resources, such as guides to preservation, and training for use and development of natural resources

